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Milk in the Alabama-West Florida Marketing Area; Recommended Decision and Opportunity To File Written Exceptions on Proposed Marketing Agreement and Order

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1093 (Tentative)

[Docket No. AO-386]

Milk in the Alabama-West Florida Marketing Area; Recommended Decision and Opportunity To File Written Exceptions on Proposed Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends establishing a Federal milk order for the proposed Alabama-West Florida marketing area. Associated Milk Producers, Inc., a dairy farmer cooperative headquartered in Montgomery, Alabama, proposed the new milk order. The proposal was considered at a public hearing held June 23–July 2, 1980. On the basis of the evidence obtained at that hearing, the Department has concluded that a Federal milk order is needed to provide stable and orderly conditions for the marketing of milk in the proposed area.

DATE: Comments are due on or before October 13, 1981.

ADDRESS: Comments (four copies) should be filed with the Hearing Clerk, Room 1077, South Building, Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–5443.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of U.S. Code and, therefore, is excluded from the requirements of Executive Order 12291.

Prior document in this proceeding: *Notice of Hearing:* Issued May 20, 1980; published May 23, 1980 (45 FR 35168).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to a proposed marketing agreement and order regulating the handling of milk in an area tentatively identified as the Alabama-West Florida marketing area.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900). Interested parties may file written exceptions to this decision with the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250, by the 30th day after publication of this decision in the **Federal Register**. Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The recommendations, as hereinafter set forth, concerning the tentative marketing agreement and order were formulated on the basis of the record of a hearing conducted at Montgomery, Alabama, on June 23–July 2, 1980, pursuant to notice thereof issued May 23, 1980 (45 FR 35168).

The material issues on the record of the hearing relate to:

1. Whether the handling of milk produced for sale in the proposed maketing area is in the current of interstate commerce, or directly burdens, obstructs, or affects interstate commerce in milk or its products;

2. Whether marketing conditions show the need for issuance of a milk marketing agreement or order which will tend to effectuate the policy of the Act; and

3. If an order is issued what its provisions should be with respect to:

(a) Handlers to be regulated and milk to be priced and pooled;

(b) Classification of milk and assignment of receipts to classes of utilization;

(c) Pricing of milk;

(d) Distribution of proceeds to producers; and

(e) Administrative provisions.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

Description of the market. The April 1, 1980,[1] population of the proposed marketing area was 3,890,061 persons in Alabama, and 421,002 in the four Florida counties, for a total of 4,311,063 persons. Major population centers include Huntsville, Birmingham, Montgomery, and Mobile, Alabama, and Pensacola, Florida.

Dairy farming constitutes a relatively minor portion of the agricultural production activities in the proposed marketing area. Data contained in one of the exhibits show that in 1974 the value of dairy products sold by Alabama farms with sales of $2500 and over amounted to only 5.3 percent of the total value of farm products sold by such farms. For the four Florida counties, the percent of such sales accounted for by dairy products varied from 1.8 percent (Santa Rosa County) to 17.6 percent (Escambia County), while a specific figure for Okaloosa County was not shown (less than .05 percent of less than $50,000).

Milk production data show that dairy farming is declining in Alabama. Alabama's milk output declined from 830 million pounds in 1973 to 603 million pounds in 1979, a decline of about 27 percent in seven years. Comparable data for the four-county area in Florida are not available.

While milk production is declining, the population of the proposed marketing area is growing. The estimate noted earlier for April 1980 is a 3.8 percent increase from 1978, and a 13.7 percent increase from 1970. Thus, the market may be portrayed as an area where the demand for milk is increasing at the same time that local supplies are declining. This latter point is reflected in raw milk imports from other states into Alabama that increased from 37 percent of the total supply used by Alabama plants in 1976 to 53 percent in 1979. Moreover, imports of packaged milk increased 94 percent over the same four-year period, apparently in response to the early 1977 termination of resale pricing regulations in Alabama.

The record provides no specific estimate of the proposed market size in terms of the total milk that would be pooled under the order. Various data were presented for the Alabama consolidated milkshed, which includes all the plants in Alabama that likely would be pooled under the proposed order. However, no such information was provided for the two plants located outside Alabama that probably would be pooled.

Nevertheless, an estimate of the approximate level of Class I sales within the proposed marketing area can be made. The procedure used here was to compute a weighted average per capita consumption figure for fluid milk products in 6[2] nearby Federal order markets for 1978[3] and multiply that

[1] Official notice is taken of "1980 Census of Population and Housing." Advance Report, Nos. PHC80–V–2 and PHC80–V–11, Issued March 1981, Bureau of the Census, U.S. Department of Commerce.

[2] Georgia, New Orleans-Mississippi, Nashville, Upper Florida, Tampa Bay, and Southeastern Florida

[3] Official notice is hereby taken of Federal Milk Order Market Statistics, Annual Summary for 1979, Statistical Bulletin No. 641, issued July 1980 by the

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figure by the 1980 population of the proposed market. On this basis (225 pounds per person X 4,311,063 persons), estimated in-area sales totaled 970 million pounds per year, or an average of 81 million pounds per month.

The 1978 Class I and I–A sales for Alabama, according to information released by the Alabama Dairy Commission, were 67.7 million pounds per month. The Alabama population estimate for 1978 was 3,742,000 persons. Per capita consumption derived from these two numbers was 217 pounds. Using the Alabama per capita figure times the 1980 population yields a projected in-area Class I sales figure of 78 million pounds monthly for the proposed marketing area.

Thus, a reasonable estimate of the Class I sales within the proposed marketing area is 78–81 million pounds, which nevertheless may tend to underestimate the total Class I sales that would be pooled under the order because it does not include out-of-area sales. Out-of-area sales may be larger for some plants associated with the market than their in-area distribution. The record implies, for example, that such is the case for the plant at Tupelo, Mississippi. If so, the total amount of Class I milk that would be pooled could be somewhat larger (by an undetermined amount) than the amount estimated above.

Also, the record provides no precise estimate of the total amount of milk that likely would represent the regular supply for the proposed market. This is partly because the record contains little or no evidence on milk supplies associated with the two plants located outside Alabama that are associated with the market. However, an estimate of about 100 million pounds monthly may be reasonable on the basis that additional supplies sufficient to keep the fluid market supplied on a year-round basis are anticipated. Some reserve supplies are necessary to cover daily, weekly, and seasonal variations in milk production and demands for fluid use.

The Florida portion of the proposed marketing area has been without milk marketing regulation for many years. The opposite is true for Alabama where state regulation of the dairy industry has been in operation since the mid 1930's. However, the effectiveness of such regulations has been lessened due to recent court decisions.

1. *Character of commerce.* The proposed Alabama-West Florida marketing area includes all 67 counties in the State of Alabama and four adjoining counties in Florida.

Handlers that likely would be fully regulated by the proposed order receive Grade A milk from more than 900 dairy farms located in six states and additional milk supplies are received from plants located outside the proposed marketing area.

There are 21 milk distributing plants that likely would be fully regulated under the proposed order. Of these, 20 are located within the proposed area. Several of the plants distribute milk in other states, including Georgia, Mississippi and Tennessee. On the basis of limited Class I sales in the order areas, ten of these plants are partially regulated under one or more Federal milk orders covering areas outside the proposed marketing area, and one has regularly been a pool plant under the Georgia or New Orleans-Mississippi orders.

Milk packaged in 17 plants located in Florida, Georgia, Indiana, Louisiana, Mississippi, Missouri, South Carolina, and Tennessee is distributed within the proposed marketing area.

Cooperative associations ship milk not used for fluid use that is produced in Alabama to manufacturing plants in Tennessee and Mississippi for surplus disposition.

The Agricultural Marketing Agreement Act of 1937, as amended, provides in section 608(c)(1) that milk orders issued by the Secretary shall regulate such agricultural commodity, or product thereof, as is in the current of interstate commerce, or which directly burdens, obstructs, or affects interstate or foreign commerce in such commodity or product thereof. On the basis of the record evidence summarized in the preceding paragraphs, it is concluded that the handling of milk in the proposed marketing area is in the current of interstate commerce. Accordingly, the Department has the authority to establish a Federal milk order for this area.

2. *Need for an order.* A Federal milk marketing order for the proposed area was supported by three major cooperative associations that supply milk to most of the handlers that would be fully regulated. Together, the three associations represented about 75 percent of the producers supplying the proposed market at the time of the hearing. Proponent of the new order was Associated Milk Producers, Inc. (AMP), Montgomery, Alabama. The other two cooperatives, Dairymen, Inc. (DI), Louisville, Kentucky, and Southern Milk Sales, Inc. (SMS), San Antonio, Texas, both strongly supported the adoption of an order. Representatives of the Alabama Farm Bureau endorsed the effort to obtain an order.

During the early part of 1980, Associated Milk Producers, Inc., was supplying about 33–34 million pounds of milk monthly from more than 400 member producers to 12 milk plants in the proposed marketing area. This represented about three-fourths of the cooperative's total production. Diversions to manufacturing outlets varied from about 8 percent to just under 15 percent of total production during January through May 1980. The balance of the members' total production was sold to other fluid milk plants outside the marketing area. AMP does not operate any milk plants.

Dairymen, Inc., at the time of the hearing, represented about 250 producers regularly supplying milk to eight processing plants in the proposed marketing area. Three of the eight plants are operated by Flav-O-Rich, a DI subsidiary, and they receive more than 75 percent of DI's total deliveries to fluid milk plants in the area. During January–March 1980, DI's shipments to the eight plants averaged about 16 million pounds per month. Additionally, in 1978 and 1979, a DI plant at Lewisburg, Tennessee, regularly shipped milk to Alabama plants. In early 1980, such shipments were minimal through March and none were made in April and May. The cooperative operates one ice cream manufacturing plant in Alabama. The data introduced at the hearing did not indicate how much milk associated with the proposed market by DI was diverted to manufacturing plants in the early months of 1980. However, in September–December 1979, DI's monthly diversions to manufacturing outlets ranged from two to four million pounds.

At the time of the hearing, the third cooperative, Southern Milk Sales, Inc., supplied milk from about 100 farms to six fluid milk plants in the proposed market. During January through May 1980, SMS deliveries to those plants averaged about 7.5 million pounds per month. The association operates no plants in connection with the proposed market, and only occasionally diverts milk to manufacturing plants from distributing plants in this market.

Several witnesses testified for the proponent cooperative on the need for a Federal order. A spokesman for Dairymen, Inc., presented the association's views regarding the need for an order. In addition, a professor in the Department of Agricultural Economics and Rural Sociology at Auburn University testified on the need for an order as a public service function of the University. The major viewpoints

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Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C.

of these hearing participants are briefly summarized as follows:

1. There is no effective application of classified pricing and pooling on a marketwide basis in the proposed marketing area to assure farmers of payment for their milk according to its use. Absent such a system, some processors in the proposed area buy milk from producers in other states at prices that differ from prices paid producers located in Alabama. The Alabama Dairy Commission only regulates the price of milk produced, processed, and sold within the State. Inequities result due to the lack of uniformity in prices paid for milk in the same use and which is in direct competition.

2. The combination of individual handler pooling under the State's program and the State's inability to price all milk received and processed at Alabama distributing plants results in a significant disparity in prices paid to producers for their milk. Not all producers delivering milk to a specific plant receive the same price f.o.b. that plant, nor do producers delivering to different plants receive the same price even though such plants are located in the same geographic area.

3. The prices paid some producers are not based on plant utilization, or marketwide utilization. Instead, they are paid flat prices. Such raw milk buying practices create disorder in the market, which is demonstrated by inequities in producer payments and inequities in raw milk costs to processors competing in a common area. Purchases of lower-priced milk for fluid use take the market away from producers who normally supply the local market, leaving them with surplus milk to be diverted to lower-priced manufacturing use. In some cases the local producers must seek what normally is a more distant alternative buyer, which increases costs and reduces marketing efficiency.

4. Under an individual handler pooling system, there is inequity among producers in balancing the daily milk requirements of distributing plants and in the handling of the necessary reserve and the seasonal surplus of the market. Cooperatives perform the function of balancing supplies, yet much of the milk so diverted to manufacturing use is not pooled and so the full costs of balancing are borne by the cooperatives. Thus, where nonpooled diversions by cooperatives are required by distributors, independent producers receive higher prices for their milk.

5. The regulatory program operated by the Alabama Dairy Commission is the only milk marketing regulatory program in effect in the proposed marketing area. That program is ineffective and its future is uncertain under current Alabama law. Thus, there is a low level of producer confidence in the State program.

6. Currently, adequate market information is not regularly available about milk marketing in Alabama, and almost no such information is available about milk marketing in the Florida portion of the proposed marketing area.

7. The auditing program of the Alabama Dairy Commission is inadequate, and no such program exists in the Florida portion of the marketing area. The auditing program conducted through a Federal order would provide greater assurance to producers that they would receive the full value for their milk based on how it was used by processing plants.

8. Individual handler pooling of milk as it exists in Alabama does not provide equity among producers and is a disorderly marketing procedure in today's milk market.

9. Some Alabama processors who distribute milk in price zones other than the zone where the plant is located are paying for their raw milk at Class I prices based on the point of sale of fluid milk products. AMP instituted "point-of-sale" pricing on June 1, 1980.

10. Cooperatives are under constant pressure to reduce the prices charged to handlers in certain areas, particularly from Birmingham, Alabama, northward. The pressure comes from handlers seeking to be competitive with other handlers who receive some, or even all, of their milk at lower unregulated prices from sources outside Alabama.

11. There is no effective program for determining whether producers are paid for their milk on the basis of accurate weights and butterfat tests.

There was no testimony directly opposing an order, but a spokesman for one group of producers who supply milk to a plant at Pensacola, Florida, stated the group's opposition to being included under any Federal order for Alabama. It was indicated that if the plant receiving their milk is to be regulated under a Federal order, the group would prefer that it be regulated under the Upper Florida order. However, this proceeding was not open to consideration of matters pertaining to the Upper Florida order, and no such proposals were received.

Two independent producers offered general testimony related to need for an order. One, who represented more than 50 other independent dairymen, urged that any regulations adopted be kept as simple as possible. Another, who said he represented 23 independent producers, opposed a marketwide pool, preferring instead an individual handler pool.

There was no handler opposition to an order expressed at the hearing. One handler's brief clearly stated that it took no position on the need for an order.

The cooperatives associated with the market generally agree that an overall system of classification, pricing, and accounting for milk should be adopted to restore stability, and that for such a system to be effective it must be established under Federal authority. Clearly, there is a consensus among the major producer groups that the state-administered program no longer effectively provides market order and stability.

The basic problem related to the need for an order is that the State of Alabama cannot classify and price milk produced outside the State, nor milk produced in Alabama and disposed of elsewhere. Over one-half of the milk supply utilized by Alabama handlers that would be regulated under a Federal order comes from outside the State. Thus, the State's classification and pricing program is not applicable to the major portion of the market's milk supply. Yet, milk produced in Alabama competes for the same Alabama retail markets as milk produced in Tennessee, and the out-of-state milk has the competitive advantage. Moreover, the state of Florida has not had a milk classification and pricing program since 1963.

The record indicates that at least two Alabama plants obtain most, if not all, of their raw milk supplies from dairy farmers in Tennessee. Such out-of-state milk is not subject to the Alabama Milk Commission's classified pricing program, but would be regulated under a Federal order.

Exhibits entered by a cooperative and by a dairy farmer from Tennessee show that a Birmingham area plant pays such dairy farmers for their milk under a base and excess plan unrelated to the classified use of milk in the plant. The dairy farmer introduced as an exhibit the milk purchase statement that he received from the plant for milk delivered during May 1980, which showed that he received $13.20 and $10.87 per hundredweight for base milk and excess milk, respectively (without adjustment for butterfat content). The base milk price was applicable at the farmer's barn, while the price for excess milk was the net price after deduction of hauling charges for the excess milk, which were about 85 cents per hundredweight. Adjusted to a 3.3 percent butterfat content, the producer received a weighted average price of

about $12.70 per hundredweight for his milk at the farm.

In the above example, the handler's cost for the base milk was $13.20 plus hauling, presumably about 85 cents per hundredweight, for a total price at the plant of about $14.05. However, the Alabama Dairy Commission's price for Class I milk at Birmingham was $14.74 for that month. Absent information on the plant's actual utilization of Class I and Class II milk, it is impossible to determine whether the dairy farmer's pay price was less than he would have received if paid on the basis of the plant's pool blend price at Alabama's prices. Nevertheless, such an ability to evade the State's classification and pricing program is not conducive to the maintenance of a stable and orderly market for milk.

A second example further demonstrates the nature of the problem that proponent seeks to address through obtaining a Federal order. In this case, another Tennessee producer testified that at the time of the hearing he was receiving a flat price of $13.75 per hundredweight for his milk delivered to a plant at Gadsden, Alabama. The hauling cost was 75 cents per hundredweight, so the producer's net return was $13.00 per hundredweight. Again, neither the handler's cost ($13.75 per hundredweight) nor the producer's return is in any way based on the plant's classified utilization of milk under the State program. However, it must be noted that the $13.75 price was at least $1.00 per hundredweight below the Alabama Dairy Commission's Class I price applicable at Gadsden for May, June, or July 1980.

The record indicates that utilization at the Gadsden plant varies from 70 to 88 percent Class I. Whether or to what extent the handler obtains milk at less than State prices in this example again depends on whether the plant's Class I utilization is at the high or the low end of that range of utilization.

As noted earlier, the plant at Pensacola, Florida, is not subject to any State regulations for classifying and pricing milk, and was not partially regulated under any Federal milk order in the spring of 1980. Thus, the plant is not subject to any classification and pricing regulations on its receipts of milk from dairy farmers. In this regard, a Florida dairy farmer, whose testimony was noted earlier, testified that as of June 1980 he and the other producers he represented were receiving a flat price of $14.65 per hunderedweight for their milk f.o.b. the Pensacola plant. In his case, the hauling cost was 38 cents per hundredweight plus a $2.00 stop charge. It is noted that the Alabama Dairy Commission's Class I price for June 1980, applicable to plants in the Mobile, Alabama, area (which is near Pensacola), was $15.13 per hundredweight.

Under the Alabama regulations, Class I milk products distributed out of state are designated as Class I–A and may be accounted for at prices different from the Class I price. This would be the case for milk distributed in the four unregulated Florida counties by plants located in Alabama. Under such a system, the proportion of a plant's receipts that is fully subject to Alabama's State regulations depends entirely on how much milk is obtained from and disposed of outside Alabama. The Alabama plants, therefore, are subject to varying degrees of regulation, and plant operators have no assurance that their competitors must pay at least the minimum class prices for their milk.

It is noted that the Alabama Dairy Commission's announced butterfat differential for adjusting payments to producers for variations from 3.5 percent butterfat content was 15 cents per one-tenth percent variation for the months of November 1979 through April 1980. However, one exhibit, a milk purchase statement for April 1980, shows a differential of 15.4 cents applicable to milk purchased from a Tennessee dairy farmer. Thus, a uniform butterfat differential did not apply to payments to all producers supplying milk to the proposed marketing area.

Another factor present in the Alabama market situation that contributes to market instability is unequal sharing of the burden of handling reserve milk supplies. The Alabama Milk Commission's regulations provide for individual handler pooling. Under that plan milk diverted to manufacturing plants is classified and priced on a load-by-load basis only if the processing plant operator makes a specific request to include a load in his plant's report of milk receipts and use. As a result, most of the milk that cooperatives have diverted to manufacturing uses in recent years has not been included in a plant's pool. Including diverted milk would, of course, lower the rate of return for any nonmember producers that are part of a plant's supply, and so handlers apparently have been reluctant to include a cooperative's diverted milk as part of their pool. this clearly has put the full burden of disposing of reserve milk supplies onto the dairy farmers who are members of the cooperatives. The costs of balancing supplies for handlers and handling the market's reserve milk supplies are not shared by nonmembers. While all the milk produced by a nonmember generally is pooled, the same often is not true for the members of a cooperative. For cooperative members, it is more likely that only the milk actually received at the plant (often only to supplement supplies of nonmember milk) will be priced under the State program.

Still another aspect of the current situation that must be recognized is that producers lack confidence in the current regulatory program for Alabama and they are uncertain whether the State's program will long endure. This latter point was borne out in testimony that the legislative authority for the State' milk pricing regualtions recently has been extended for relatively short periods of time. The record shows that in 1979 the authority to regulate milk handling was extended for two years, or until a Federal milk order could be implemented.

From the foregoing, it is clear that there is no overall plan whereby all dairy farmers who supply milk for distribution in the Alabama-West Florida marketing area are assured of payment for their milk in accordance with its use and at minimum prices that are uniformly applicable throughout the market. The problems of unstable marketing conditions encountered by the producers in the Alabama-West Florida marketing area, if they continue, could lead to even further dependence on outside milk supplies to meet the fluid milk needs of the area. A Federal milk order establishing a classified milk pricing system at reasonable levels and a marketwide pool for distributing the returns from milk sold at such prices uniformly among all producers will help provide the needed market stability. An environment of stable and orderly marketing conditions throughout the Alabama-West Florida marketing area depends on the adoption of a classified pricing plan based on audited utilization of all Grade A milk purchased by handlers from producers and an equitable division among all producers of the proceeds obtained from sales of their milk under the classified pricing plan.

Under a Federal milk order all producers who supply the proposed market will be assured that their milk will be sold at reasonable minimum prices applicable to the classified uses of milk provided herein and that each producer will share pro rata in the returns from such sales in the respective classes, including the lower priced used of reserve milk supplies not needed for fluid uses. Handlers will be assured that their competitors will pay for milk at not

less than the minimum prices set by the order and that such prices will apply whether the milk comes from farms in Alabama, Florida, Tennessee, or other states, and without regard to whether the milk is disposed of inside or outside the marketing area.

The record in this proceeding clearly shows that the dairy industry does not regularly have available detailed information regarding milk procurement and use in the Alabama-West Florida marketing area. Such information would be provided on a continuing basis under a Federal order, and would contribute to the development and maintenance of stable and orderly marketing conditions. Although the lack of such data does not necessarily demonstrate need for an order, the availability of complete and accurate market information should provide a substantial benefit to producers, cooperatives, and handlers alike.

It is concluded that a Federal order for the Alabama-West Florida marketing area as herein proposed will stabilize and improve milk marketing conditions in the area. The order is in the public interest in that it will establish orderly marketing conditions for producers and handlers relative to milk distributed in the proposed marketing area and will assure a continuing and adequate supply of high quality milk for consumers. Moreover, the order will effectuate the declared policy of the Act by providing for:

1. The establishment of uniform minimum prices to handlers for milk received from producers according to a classified plan based upon the utilization made of the milk;

2. A regular and dependable procedure that affords all interested parties the opportunity to participate, through public hearings, in the determination of changes that may be required in the marketing plan in order to insure an orderly market;

3. An impartial audit of handlers' records to verify the payment of required prices;

4. A system for verifying the accuracy of the weight and butterfat content of milk purchased;

5. Uniform returns to producers supplying the market based upon an equal sharing among all such producers of the returns from the order prices for both the higher-valued Class I milk and the lower returns from the sale of reserve milk that cannot be marketed for fluid use; and

6. Marketwide information on receipts, sales, prices, and other related data concerning milk marketing.

3(a). *Handlers to be regulated and milk to be priced and pooled.* It is necessary to designate clearly what milk and which persons would be subject to the various provisions of the order. This is accomplished by providing specific definitions to describe the marketing area, route disposition, the types of plants, the various categories of regulated persons (handlers), and the persons (producers) whose milk will be subject to the uniform prices.

Marketing area—The Alabama-West Florida marketing area should include all the territory within the boundaries of Alabama and the Florida counties of Escambia, Santa Rosa, Okaloosa and Walton. The defined marketing area should include all piers, docks, and wharves connected therewith and all craft moored at such facilities. The marketing area should include, as well, all territory occuped by municipal, state, or federal government reservations, installations, institutions, or other similar establishments if any part thereof is within the boundaries specified above.

The record in this proceeding clearly establishes that the entire State of Alabama and the four Florida counties comprise a single marketing area for milk. Such marketing area defines an area wherein the plants that would be fully regulated are the primary sources of milk for consumers.

The basic data to support the marketing area definition adopted herein were obtained from a survey of 523 grocery stores. The estimates of fluid milk distribution by counties that were placed in the record were based solely on the observations made in the grocery stores surveyed. There are limitations, of course, to the conclusions that may be drawn from such data. Nevertheless, the information is useful for identifying which plants compete with other plants for Class I sales and for providing a reasonable estimate of the geographic territory over which that competition extends. It also should be pointed out that, with minor exceptions, the survey data were not challenged at the hearing.

The proposed marketing area is made up of 67 counties in Alabama and four counties in Florida. An analysis of the survey data shows that with only minor exceptions, the proposed area is a largely self-contained market with respect to milk distribution. For example, in 38 of the 71 counties, the survey indicates that 100 percent of the distribution is from plants located within the marketing area. Plants in the marketing area distributed at least 75 percent of the total in another 18 counties. Thus, in 79 percent of the counties, at least ¾ of the distribution observed in the survey was from plants located in the marketing area.

In five Alabama counties (Geneva, Houston, Lee, Russell, and Sumter) the survey data indicated that more than 50 percent of the distribution came from plants that would not be regulated under the new order. For two other counties, Barbour and Henry, a witness for Beatrice Foods (Meadow Gold) disagreed with the survey results and indicated that sales in these two counties were spit about 50 percent each to Alabama plants and to plants fully regulated under the Georgia order. Thus, it is estimated that plants fully regulated under the Georgia Federal order distributed at least half of the total milk distributed in six counties in southeastern Alabama. The observed data for Sumter County indicate the majority of milk sold there originates at a plant pooled under the New Orleans-Mississippi Federal milk order. In these seven counties, the primary source of milk appears to be plants regulated under other orders.

Nevertheless, these counties should be included in the marketing area. Failure to do so would serve no real purpose since the milk being distributed in them would be regulated, either under the Alabama-West Florida order or under some other order. Moreover, inclusion of the seven counties will not result in full regulation of any plant that otherwise would be unregulated, or cause a plant to shift regulation from another order to the order adopted herein. Including the counties also will simplify the reporting requirements of handlers and will simplify administration of the order.

The marketing area is also characterized by substantial overlapping of sales territories. This further demonstrates that the marketing area defines an area within which there is considerable competition among handlers. One plant was found to have its products in stores near the Alabama-Tennessee border as well as in stores in Florida. Most of the counties in the marketing area were shown to have milk distributed from three or more plant located in the marketing area. In only six counties in the proposed marketing area was there distribution from only one plant located within the area.

In addition to competing with each other for Class I sale in common areas, many of these plants either compete with each other for milk supplies, or receive at least a portion of their supplies from the same cooperative association.

As noted elsewhere in this decision, a group of producers who deliver their milk to the plant at Pensacola, Florida, urged that the four Florida counties not

be included with any order adopted for Alabama. Nevertheless, there is compelling evidence that the Florida territory should be included in the marketing area. The plant in Pensacola distributes milk in five Alabama counties. The survey data indicate that such sales comprise about 35 percent of that plant's total distribution within the proposed area.

In addition, the grocery store survey shows that five plants located in Alabama distribute milk into the Florida portion of the market. These plants distributed from three to 24 percent of their total in-area sales within the Florida territory. These data, and those noted in the preceding paragraph, provide a substantial basis for not limiting the proposed marketing area to just the State of Alabama.

Route disposition. A definition for "route disposition" is a convenience for specifying the various kinds of fluid milk sales outlets that will be considered in determining whether a distributing plant would be regulated under the order. As proposed by the order proponent, and adopted herein, route disposition would mean any delivery of a fluid milk product classified as Class I milk to a retail or wholesale outlet (except to a plant), either directly or through any distribution facility or vendor, and including any disposition from a plant store or through a vending machine. It would not include the delivery of fluid milk products to a handler's distribution points. The distribution from such points would be considered a route disposition from the milk plant where the fluid milk products were processed and packaged.

Plant. The order should contain a "plant" definition for proposes of clarity, ease of order interpretation and reference. As proponent suggested and as adopted herein, "plant" means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received, processed, or packaged.

Separate facilities used only as a distribution point for storing packaged fluid milk products in transit would not be a plant. Similarly, separate facilities at which milk is only reloaded from one tank truck to another would not be a plant as defined herein.

In connection with the discussion of the plant definition, two related issues should be considered. In that regard, the proponent cooperative included a reload point definition in the proposed order. A witness for the cooperative testified that a definition of such facility was needed to clearly establish it as a non-plant and thus not a pricing point. The witness described such a facility for the record as generally an enclosed building without stationary holding tanks (to cool and store milk) where milk is transferred from one tank truck to another. However, he also indicated that no such facility was being used to supply milk to the Alabama market at the time of the hearing.

The plant definition adopted herein provides the basic guidelines as to what constitutes a reload point. In that regard, "separate facilities without stationary holding tanks which are use only as a reload point for transferring bulk milk from one tank truck to another" would not be a plant under the plant definition adopted herein. Hence, the cooperative's intent with respect to a reload point is accomplished in the plant definition. There is no need to include a separate reload point definition in the order.

Another proposal pertaining to the definition of a plant was discussed at the hearing. Five handlers who would be fully regulated under the order proposed that a manufacturing plant which is operated by a handler who also operates a fluid milk plant not be considered a part of the fluid milk plant operation for pooling purposes if the manufacturing and fluid processing facilities are operated completely separate of each other. A spokesman for the handlers testified that several dairy companies in Alabama operate separate ice cream manufacturing plants in addition to their fluid milk plants. He stated that such manufacturing plants, which keep separate books and records, do not distribute fluid milk products on routes and normally do not receive milk from dairy farmers. Rather, receipts at the manufacturing plant essentially are milk and cream that are excess of the handler's distributing plant operations and which are transferred to the handler's manufacturing plant from the distributing plant.

As provided herein, an ice cream manufacturing plant would be defined as a "plant" since it processes milk. However, the plant would not be considered a part of a distributing plant unless the two plants are operated jointly on the same premises, with the receiving, storage, or processing facilities being shared. Whether the separately operated manufacturing plant would be a pool plant would depend on whether the plant also distributed any fluid milk products in the market or shipped bulk milk to pool distributing plants. The provisions that would detemine the pooling status of a plant are discussed later under the heading "pool plant."

Distributing plant. The order should define a distributing plant as a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk and at which fluid milk products are processed or packaged and from which there is route disposition in the marketing area during the month. The definition adopted herein is patterned after the one proposed by the order proponent, with one exception that is discussed later. The definition for a distributing plant is provided to describe the activities conducted at such a plant and to distinguish this type of plant operation from others. It also is helpful in referring to this particular type of plant throughout the order.

Proponent's definition referred to milk "approved for fluid consumption." The definition adopted refers to "Grade A milk" and not to milk "approved for fluid consumption." The terms are essentially synonymous, however, when used in context of the market encompassed by this order area.

The Alabama Department of Public Health is responsible for regulating the State's dairy industry with respect to milk sanitation and quality. It is responsible for all milk and milk products from the time the milk is picked up at the farm, transported to a processing plant, processed, packaged and delivered to the consumer. A similar program is conducted by the Division of Dairy Industry of the State of Florida. The health regulations and the standards for rejection of milk in the two states in many instances are identical.

In that regard, both states conduct routine inspections of dairy farms and processing plants. Rigid surveillance programs are conducted by agencies of both States to insure that only high quality milk and milk products are sold to consumers, and the regulations of both states specify that only Grade A milk may be sold. This means that the dairy farms are inspected and approved for the production of Grade A milk. Likewise, all plants processing or packaging milk for fluid use must be approved for handling Grade A milk. Accordingly, it is appropriate to refer in the order to "Grade A milk", rather than to milk "approved for fluid consumption", as proposed.

Supply plant. A "supply plant" also should be defined under the order. As adopted herein, "supply plant" means a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk, and from which fluid milk products are transferred during the month to a pool distributing plant.

The definition provided herein is similar to the one suggested by the order proponent. However, for the reasons

discussed under the definition of a distributing plant, the supply plant definition should reflect that the plant must be approved to handle Grade A milk.

Proponent's witness testified at the hearing that there were no supply plants furnishing sufficient quantities of milk to distributing plants on a regular basis to qualify for pool plant status. The cooperative also indicated that it was not currently operating a supply plant and has no plans to do so in the future. The only reason proponent advanced for including a supply plant provision for the Alabama-West Florida order was that other Federal orders in the Southeast provide a definition for such plants. However, under cross-examination the cooperative's spokesman acknowledged that although the Alabama market essentially is a direct-delivery market, it is possible in the future that milk may need to be brought into the market through supply plants from procurement areas located considerable distances from the market. In these cases, according to the witness, it would not be economical to furnish the milk on a direct-ship basis.

Pool plant. Essential to the operation of a marketwide pool is the establishment of minimum performance requirements to distinguish between those plants engaged in serving the fluid needs of the regulated market and those that do not serve the market in a way or to a degree that warrants their sharing (by being included in the pool) in the Class I utilization of the market. Because of differences in marketing practices and functions between distributing plants, supply plants and cooperative "balancing" plants, separate performance standards for each type of operation are provided in the attached order.

The following discussion sets forth the pooling standards that should apply to the various types of pool plants. To facilitate the discussion, it is noted that the performance standards for pooling a distributing plant and a supply plant provide that the plant's required association with the market should be measured in terms of the proportion of its milk receipts that are disposed of in the market. It is intended that such receipts would include any producer milk that is diverted from the plant to nonpool plants. Although diverted milk is not physically received at the plant from which diverted, it is, nevertheless, an integral part of that plant's supply of milk and acquires producer milk status by virtue of its association with such plant. Therefore, divered milk should be included in the total receipts of milk at the pool distributing plant or the pool supply plant from which the milk was diverted for the purpose of determining whether the plant qualifies as a pool plant.

Milk that a cooperative bulk tank handler diverts from a pool plant to a nonpool plant also should be included in such plant's receipts for purposes of determining the plant's pool status. Requiring all diverted milk to be included as a receipt at pool plants from which diverted in determining their pool status will insure the integrity of the order by requiring all producer milk to be associated with pool plants.

Along that same line, milk diverted to a supply plant from an other order plant should not be included as a receipt of milk at the supply plant for the purpose of determining whether the plant qualifies as a pool plant. Since such milk would be considered a part of the total suppy of milk at the plant from which diverted, it should not be included in the supply plant's receipts. This will permit milk to be diverted to a supply plant with manufacturing facilities for processing without affecting the pool status of the supply plant. A pool supply plant with manufacturing capabilities may represent the nearest available outlet for milk surplus to the fluid needs of another Federal order area.

No similar accommodation needs to be made when milk is diverted to a distributing plant. Since these plants are essentially fluid bottling plants, there really is no reason to divert milk to these plants for any reason other than for bottling purposes. Hence, all milk physically received (including milk diverted to such plant) at the plant should be considered in the plant's total receipts for the purpose of determining whether the distributing plant qualifies as a pool plant.

Provision also is made for a cooperative association to pool a balancing plant. The pooling standard for such a plant would be measured in terms of the cooperative's overall supply function for the market, i.e., the proportion of the cooperative's member producer milk that is delivered to pool distributing plants.

In connection with performance standards for pool plants, Dairymen, Inc. (DI) submitted a modification at the hearing to impose seasonally varying Class I utilization standards for pooling distributing plants and supply plants. Before discussing the appropriate pooling performance standards for the various types of plants, the question of seasonality of fluid sales and producer receipts should be reviewed.

The order proponent, Associated Milk Producers (AMP), proposed that the months of August through February be recognized as the season when milk production is lowest relative to the market's fluid needs. The months of March through July were designated as the flush milk production months under the cooperative's proposal. DI suggested that September through January be considered as the short milk production season and that February through August be recognized as the flush milk production season.

Market data indicate that the period of September through January generally is the time when milk supplies are shortest relative to the fluid needs of the proposed Alabama-West Florida market. On the other hand, the months of February through August are the months when milk supplies for this market are more adequate to meet the fluid needs of distributing plants.

Based on a statistical summary of data compiled by the Alabama Dairy Commission for a recent 4-year period (1976–79), average monthly Class I sales as a percent of the total supply available to Alabama processors ranged from 91 percent in November to 87 percent in July. The Class I percentage so computed was above 90 percent in each of the months of September through January except in December. The relationship between supplies and sales is somewhat unique in the month of December when, due to school closings and the holidays, the demand for milk falls off sharply in the latter part of the month. However, in view of the relatively higher fluid demand during the first two-thirds of the month, it is appropriate to include December with the months of September, October, November and January as months when production is relatively short to meet the fluid needs of this market.

In each of the other seven months of February through August, the monthly average Class I sales as a percent of producer supply available to Alabama processors was in the upper 80's. Although the sales-supply situation in these months has been in fairly good balance, these are the months when milk supplies have been more adquate to meet the proposed market's fluid needs. Moreover, it should be noted that the data from which these utilization percentages were computed do not include all of the milk that would be diverted to nonfluid uses in these months. Thus, the actual utilization levels under a Federal order likely will be lower.

The months of September through January are adopted as the market's short milk production season. In that regard, greater shipments by supply

plants will be required and individual producers will have to "touch base" more often during these months under the proposed order. In addition, on the basis of their deliveries in such 5-month period, producers will establish their bases under the base-excess plan adopted in this decision.

On the other hand, the months of February through August will be adopted as the flush milk production period for this market. Accordingly, fewer shipments will be required by supply plants and individual producers will not have to "touch-base" as often during these months. In addition, producers will receive their payments on the basis of their base and excess milk deliveries during part of this period.

With respect to its modified proposal to impose Class I utilization standards, DI urged that to qualify as a pool plant not less than 70 percent of certain specified receipts at the distributing plant or supply plant in each of the months of September through January and not less than 50 percent during each of the months of February through August be assigned to Class I milk. Under this modification, a monthly Class I use standard for distributing plants would be used in lieu of the total route disposition standard suggested by the order proponent.

A spokesman for DI contended that monthly Class I use standards for distributing plants and supply plants are needed to assure that the milk pooled under this order is closely associated with the market's fluid milk needs. Based on the statistical data of the Alabama Dairy Commission, the DI witness testified that its proposal would allow an individual plant to have a Class I utilization at least 15 percentage points below the market's average Class I use during the September–January period. During the months of February through August, the proposal by DI would allow an individual plant's Class I use to be about 25 percentage points below the market's average Class I utilization and maintain pool status for such plant. In DI's view, these monthly minimum Class I requirements on distributing plants and supply plants, which would vary seasonally, are reasonable in view of marketing conditions in the proposed area, even though they would be well under average levels of Class I use.

Southern Milk Sales (SMS) supported DI's proposal to impose a Class I utilization standard on supply plants. A spokesman for the association contended that the Class I requirement is needed to insure that milk delivered to a supply plant by producers associated with the proposed market will be made available to pool distributing plants for their bottling requirements. He further testified that the integrity of the blend price thus would be protected for producers closely associated with the market's Class I sales.

In its brief, AMP stated its opposition to DI's proposal to impose Class I utilization standards on distributing plants and supply plants. In that regard, the cooperative supported its position on performance standards for such pool plants as stated at the hearing. AMP's brief stated its view that its pooling proposals were adequate to demonstrate a plant's association with the marketing area to such an extent that it should be a pool plant. Also, Draft, Inc., in its brief opposed DI's pooling proposal on the basis that it would exclude available milk supplies from participation in the marketwide pool.

There is no basis on this record to conclude that the standards for pooling distributing plants and supply plants in the proposed market require the imposition of Class I utilization standards. There is no indication that handlers who will be regulated under the Alabama-West Florida order are likely to experience problems in obtaining adequate supplies of milk for fluid purposes because milk is being used instead for manufacturing uses elsewhere.

DI offered considerable testimony on why the Alabama-West Florida order should accommodate only the pooling of enough milk to meet the proposed market's Class I needs, including reserves to accommodate the daily, weekly, and seasonal variations in supply and demand. DI's contention was that this is what the Act contemplates, and that it indeed has been the Department's policy in that regard.

The Act provides no basis for concluding that a Federal order should restrict the absolute volume of Grade A milk that is pooled. What is intended is to provide regulations to ensure that the market's fluid milk needs will be met under marketing conditions characterized by orderliness and stability. To that end, the order should provide certain performance standards for identifying plants and producers who participate in meeting the fluid milk needs of the market to a degree that warrants being included in the marketwide pool. However, those performance standards should not preclude from pool status additional supplies of milk that may in the future become associated with the fluid milk needs of the Alabama-West Florida market.

In connection with its proposal to impose a Class I utilization requirement on supply plants, DI proposed that milk transferred from a supply plant to another pool plant be classified on a pro rata basis with all other pool receipts at such plant. Since this decision denies the proposal to impose a Class I utilization requirement on supply plants, it is not necessary to further consider this corollary proposal.

In response to DI's proposed modification to impose a Class I utilization standard on distributing plants, a handler operating a fluid milk processing plant at Gadsden, Alabama, proposed that two or more distributing plants of the same handler be permitted to combine their dispositions into a single unit for the purpose of meeting the Class I utilization percentage requirement proposed by DI. The handler's spokesman contended that, if DI's proposal is adopted, the Gadsden plant may not qualify as a pool plant because by-products are made at that plant for distribution by its other fluid milk processing plants in Alabama.

In its brief, the handler took the position that its unit pooling proposal should be considered only if DI's proposed Class I utilization standards are adopted. Since this decision denies the proposal to impose a Class I utilization requirement on distributing plants, it is not necessary to further consider this handler proposal.

To qualify as a pool plant under the proposed Alabama-West Florida order, a distributing plant would be required to meet performance standards related to the proportion of its receipts used in route disposition, including such disposition in the marketing area. Pool distributing plants would include only those plants substantially engaged in the distribution of fluid milk products. In this connection, a pool distributing plant's total route disposition each month, both inside and outside the marketing area, should not be less than 50 percent of its receipts from all sources of Grade A fluid milk products that are physically received at such plant or diverted from the plant to nonpool plants. The route disposition of such a plant in the marketing area must also be at least the lesser of a daily average of 1,500 pounds or 10 percent of such receipts.

The standards for pooling a distributing plant are similar to those proposed by the proponent cooperative. Based on the record of marketing conditions in the proposed marketing area, the 50 percent route disposition requirement herein provided should be appropriate. Any plant which has a

majority of its business as route disposition of fluid milk products should be considered as a pool distributing plant under the new order. The 50 percent route disposition standard is commonly used throughout the Federal milk order program to determine whether a plant is primarily involved in processing and distributing fluid milk products.

AMP's proposed in-area route disposition requirement was intended to assure that a large plant with substantial sales in the marketing area would be fully regulated. For example, assume that a distributing plant had 5 million pounds of Grade A milk receipts and route dispositions of 300,000 pounds per month (6 percent of receipts) in the marketing area. If the only in-area measure of performance for pool plant status is the 10 percent requirement, the plant would be a partially regulated distributing plant. Nevertheless, 300,000 pounds of route dispositions could represent a major portion of the total Class I sales within a small portion of the marketing area. For this reason, AMP proposed that any plant having route disposition in the marketing area averaging 1,500 pounds per day (45,000 pounds per month) should be fully regulated under the order. The AMP witness indicated that the plant at Tupelo, Mississippi, could be in a position to operate in the manner described above.

The in-area pool plant standard proposed by AMP is a reasonable pooling standard and should be adopted. Accordingly, a distributing plant with at least the lesser of a daily average of 1,500 pounds or 10 percent of its receipts disposed of on routes in the marketing area would be a pool plant unless the plant also qualifies as a pool plant under another Federal order and the plant has a larger volume of route disposition in the marketing area of such other order. This standard will provide a reasonable indication of when a distributing plant is associated with this market to the extent that warrants its full regulation under the order.

The record indicates that the 21 distributing plants that would most likely qualify as pool plants under the Alabama-West Florida order would have no difficulty in meeting either the total route disposition standard or the in-area route disposition standard adopted herein.

A supply plant should qualify for pool status by transferring a certain percentage of its total receipts from dairy farmers to pool distributing plants. As provided herein, the supply plant's total receipts would include deliveries to the plant by its own producers and by a cooperative as a bulk tank handler. In addition, producer milk diverted from a supply plant would be included in the plant's total receipts from dairy farmers and, conversely, milk diverted to such plant from another order plant would be excluded from such plant's total receipts for the purpose of determining whether the supply plant qualifies as a pool plant. The reasons for such inclusions and exclusions in a supply plant's total receipts have been discussed previously with respect to this issue and need not be repeated here.

AMP proposed a shipping requirement of 50 percent for supply plants. The cooperative's proposal also would provide automatic pool plant status for a supply plant in the months of March through July if such plant qualified as a pool supply plant for this market in each of the immediately preceding months of August through February.

A witness for DI testified that the order proponent's suggested performance standards for a supply plant would allow such a plant to have a Class I utilization as low as 25 percent and remain pooled. He contended that in an area where the annual average Class I use has been almost 90 percent, a performance standard that would allow a plant to have Class I utilization as low as 25 percent is inappropriate when the objective of the act is to obtain milk for fluid use.

The witness for Dairymen, Inc., testified that he did not believe there was a need for either a supply plant definition in the order or the operation of such plants for this market. This was premised on the belief that the proposed market can be supplied on a direct-delivered basis. He contended that because of this supply plants are an inefficient method of supplying milk to the market.

However, since Federal orders allow handlers to buy their milk supply from whomever they wish, there could be occasions when a milk supply is obtained at sufficient distance from the market center to make it practical for milk to be handled through a supply plant. In recognition of this and in view of the proposed market's anticipated supply-demand conditions, DI proposed seasonally varying monthly shipping requirements for supply plants. Under the DI proposal, a supply plant would be required to ship at least 70 percent of its total receipts from dairy farmers to pool distributing plants during each of the months of September through January and 50 percent of such receipts in each of the other months.

Southern Milk Sales supported DI's higher shipping standards for supply plants for the same reasons that it supported the imposition of Class I utilization standards on such plants proposed by DI. The reasons given by the cooperative for supporting the more stringent pooling standards have been noted in previous findings under this same issue.

Although Kraft, Inc., does not operate a plant that likely would be fully regulated under the Alabama-West Florida order, a brief was filed by Kraft as an interested party. Kraft operates an other order plant that has route disposition in the Alabama-West Florida marketing area and also operates manufacturing facilities that receive milk supplies that are excess to the market's fluid needs. The handler took the position that the proposed supply plant provisions were deficient because a supply plant operator would not get credit for movements directly from the farms of producers as qualifying shipments to distributing plants in addition to transfers to such plants from the supply plant.

There is no basis on this record to adopt the provision described by Kraft. No specific proposal was advanced to cover this issue and the problems that Kraft envisioned with respect to the order's supply plant provisions were not explored on this record.

Kraft also requested in its brief that official notice be taken of two Department of Agriculture publications that predict a steady conversion from manufacturing grade production to Grade A production. The request for official notice is denied. The brief fails to indicate any relevancy of that material to any issue on which hearing evidence was received in this proceeding. Therefore, there is no purpose to be served by taking official notice of the requested USDA publications.

As envisioned for this area, a supply plant would be a plant that is located some distance from the consumption centers and that performs the traditional function of assembling milk and supplying distributing plants with supplemental milk supplies on heavy bottling days. Because of its distance from the market center, this type of plant would find it more efficient to receive milk from the farm at the plant and then transfer it into larger over-the-road tank trucks for transshipment to distributing plants. Accordingly, a "supply plant" should be defined on a functional basis, i.e., transferring fluid milk products to pool distributing plants.

At the time of the hearing the Alabama-West Florida market was not being served by any plant that specializes in the collection of milk for

cooling and transshipment to a distributing plant to such an entent that it would qualify for pool status on this basis. In fact, most markets today do not have such plants, which have generally lost their usefulness with the advent of farm bulk tanks, refrigerated trucks, and a modern highway system. Nevertheless, supply plants have continued to be associated with some Federal order markets.

Since not enough milk is produced in the marketing area to furnish the fluid milk needs of handlers, it is necessary to import milk regularly from sources beyond such area. Hence, specific pooling standards for supply plants need to be included in the order in the event such a plant in the future should supply milk for this market to such an extent that it should particiapte in the marketwide pool.

Under the standards adopted herein, a supply plant would be required to transfer 70 percent of its total receipts from dairy farmers to pool distributing plants in each of the months of September through January and 50 percent of such receipts in each of the other months to qualify as a pool plant. These shipping standards were proposed by DI and supported by SMS.

Given the anticipated high Class I utilization in this market, the order should not provide, as the order proponent suggested, for automatic pool plant status for supply plants during the months of seasonally higher milk production. The fluid requirements of distributing plants in this market are such that supply plants, when relied upon for milk, should be required each month to transfer certain percentages of their receipts to distributing plants to participate in the order's marketwide pool. Supply plants likely would need to ship milk to distributing plants in this market even during the months when production tends to be heavier, because during the days of peak bottling demand all of the milk supply available for this market will be needed to funish the needs of distributing plants. For this reason, a supply plant's requirements for pool status should apply on a year-round basis.

Pooling milk through a supply plant may not be the most efficient way to pool milk in this market. Since the record indicates that this market essentially is supplied on a direct-delivery basis, the order's pooling provisions should be so structured that a handler will not have an incentive to pool milk through a supply plant when the milk can move more efficiently to a distributing plant directly from the farm. Requiring a supply plant to qualify on the basis of shipments each month during the year will serve that purpose.

As indicated, it is reasonable under the market conditions to require a supply plant to deliver at least 70 percent of its receipts from dairy farmers to pool distributing plants during the months when milk supplies tend to be shortest relative to the market's fluid needs. However, a lower shipping percentage (50 percent) for supply plants should apply in each of the months of February through August when milk production is seasonally higher. In these latter months, a smaller proportion of a supply plant's total receipts from producers may be needed at pool distributing plants if their Class I sales remain relatively constant. Furthermore, Class I utilization declines at some pool distributing plants during the summer months when schools are not in session. Accordingly, in the months of heavier milk production, a lower shipping requirement for supply plants is appropriate.

In discussing the pooling issue at the hearing, a witness for Dairymen, Inc., testified that under AMP's proposed shipping standard for supply plants the DI plant at Lewisburg, Tennessee, would have qualified as a pool supply plant in certain past months on the basis of shipments to distributing plants that would be regulated under the new Alabama-West Florida order. Since significant quantities of milk have been shipped from the Lewisburg plant to Alabama distributing plants from time to time, and because the Alabama market is the primary recipient of supplemental shipments from such plant, he contended that the Lewisburg plant should be regulated under the proposed Alabama-West Florida order.

To accommodate this situation, DI modified its hearing notice proposal for a supply plant operated by a cooperative and proposed that a cooperative be permitted to pool a balancing plant, upon request, if the accociation delivers 60 percent or more of its member producer milk to pool distributing plants during the month. The 60 percent delivery requirement could be met by deliveries directly from the farm and or by transfers from the association's plant under the cooperative's proposal.

Two other cooperatives supplying the market (AMP and SMS) opposed the DI proposal essentially for the same reason, i.e., it would allow, in their opinion, the cooperative to "ride" the pool by associating unneeded supplies of milk with the marketwide pool, thereby depressing the order's uniform prices. Thus, in their view, to the extent that the adoption of a balancing plant provision would permit DI to do this, the returns to the member-producers of these two cooperatives would be reduced.

The record indicates that cooperatives have been balancing milk supplies for this market. An exhibit comparing the proponent cooperative's deliveries to fluid milk processors who have independent producers with the association's deliveries to such processors without independent producers shows that the variation in the average daily delivery by AMP to processors with independent producers was almost three times as great as it was for deliveries to processors without independent producers. For example, during September 1978–August 1979, the averge daily deliveries by AMP to processors without independent producers ranged from a low of 91 percent of the annual average in July to a high of 104 percent of such average in April (a difference of 13 percentage points). On the other hand, during that same period, the cooperative's average daily deliveries to fluid milk processors with independent producers ranged from a low of 81 percent of the annual average in June and July to a high of 117 percent in October (a difference of 36 percentage points).

A greater variation in deliveries to a distributing plan twas experienced by AMP if such plant had its own producers. This resulted because as the plant's own producers increase their production, less milk is needed from the cooperative. When the cooperative's milk is displaced like this by milk from the plant's own producers, oftentimes the cooperative's displaced milk must be hauled long distances to a manufacturing plant at the expense of the association. Conversely, when the production of a plant's own producers decreases, the cooperative is called on to supply more milk. If the cooperative is short of milk overall in supplying its customers at this time, it may be necessary for the cooperative to import milk from beyond the local supply area to fulfill the fluid needs of handlers, which also can be costly to the cooperative.

The Lewisburg plant is a large manufacturing plant that receives substantial volumes of milk that are excess to the fluid milk needs of other Federal order markets throughout the Southeastern United States. It has the capacity to handle about 900,000 pounds of milk per day. Although considerable milk is transferred from the plant to fluid milk outlets during certain months of the year, the plant is primarily

engaged in manufacturing butter and nonfat dry milk.

The Lewisburg plant is a fully regulated pool plant under the Nashville order, qualifying as a cooperative balancing plant. Unlike the Alabama situation, very few if any shipments from the Lewisburg plant are made to distributing plants regulated under the Nashville order. A significant portion of the receipts at such plant are diversions off of other Federal order markets in the Southeast. In such cases, the diverted milk may be considered producer milk under the other order rather than a direct receipt of producer milk at the Lewisburg plant under the Nashville order.

The new Alabama-West Florida order should accommodate the pooling of the Lewisburg plant as a cooperative balancing plant. Although the Lewisburg plant is located in a major part of this market's procurement area, it oftentimes may be more economical to move the milk directly from the farm to an Alabama distributing plant than it is to haul the milk to Lewisburg, recieve it there at the cooperative's plant solely for the purposes of qualifying the plant, reload it and then haul it to a distributing plant, which in some cases is closer to where the milk was produced. However, when milk of some producers is temporarily not needed at distributing plants, their milk could maintain pool status by being delivered from the farm directly to the balancing plant, since it would be a pool plant. The plant thus would be an assured outlet for reserve milk without involving arrangements under which the producers' milk would need to be diverted from distributing plants to maintain producer milk status under the order. Affording pool status to the balancing plant also would facilitate the transfer of milk from the cooperative's balancing plant to pool distributing plants.

Although milk should be moved when possible directly from the farm to distributing plants, there are occasions when balancing plants are called upon to make supplemental shipments. Such shipments, however, often may not be in sufficient amounts to qualify the plant as a supply plant. Nevertheless, the plant should qualify for pooling as long as the cooperative has demonstrated an adequate degree of supply performance for the market as a whole.

The cooperative should be permitted to move the milk in the least costly manner (either directly from the farm and/or by transfer from its balancing plant). In certain cases, this could result in significant savings to the cooperative in plant handling and transportation costs. In view of this, the cooperative's deliveries from the farm and/or transfers from the plant should count as qualifying shipments in determining whether a balancing plant meets the minimum delivery requirement. This will provide maximum flexibility to the cooperative in moving its milk supplies to customers.

It is necessary that there be a reasonable demonstration that the milk pooled through balancing plants is a part of the regular market supply. Milk should not be permitted to the associated with the market merely for manufacturing purposes since this would reduce returns to producers and discourage the production of an adequate supply of milk by those producers regularly supplying the fluid market. A balancing plant's pool status should be contingent on its function with respect to the milk supply for the fluid market and this is reasonably reflected in how much of the cooperative's total member producer milk is delivered to pool distributing plants.

The record indicates that, on a year-round basis, 80 percent or more of DI's member producer milk under the proposed order would be delivered to distributing plants that will be regulated under the new Alabama-West Florida order. Based on marketing conditions, at least 70 percent of the producer milk of member producers should be delivered each month to pool distributing plants to qualify a cooperative's balancing plant for pooling without requiring that plant to separately meet the shipping requirements of a pool supply plant. This will assure a substantial association of the cooperative's total producer milk supply with the market's fluid use and will minimize the opportunity for any cooperative to pool unneeded milk through the balancing plant.

As DI suggested, the pooling of the cooperative's balancing plant on a request basis would be conditioned on such plant's not qualifying as a pool distributing plant or a pool supply plant under this or any other Federal order. If a balancing plant meets the performance requirements as a distributing plant or a supply plant under this or any other Federal order, there would be no reason to request status for such a plant under this order as a pool balancing plant. Also, the balancing plant must maintain approval by a duly consituted regulatory agency to handle Grade A milk. Such a provision is necessary to assure that the plant can be depended upon for supplemental supplies when they are needed by distributing plants. Since the Alabama-West Florida order as adopted herein would not require any minimum shipments to the market from a cooperative's balancing plant, it is conceivable that the plant might not take the necessry steps to maintain its health approval, thereby precluding the plant from being able to transfer milk from the balancing plant to pool distributing plants.

The performance standards adopted herein for the various types of pool plants should be adequate to insure that the milk pooled under the Alabama-West Florida order is associated with the market's fluid use. They are sufficient to prevent the development of Grade A milk supplies and the association of such supplies with the order solely for the purpose of obtaining milk for other than Class I use. The provisions are adequate considering the proposed market's Class I needs and the historical utilization of producer milk in such area.

Certain plants should be excluded from "pool plant" status even though they meet the pooling standards of the order. For instance, a distributing plant possibly could meet the pooling requirements of this order and also another Federal order in the same month. Such a situation could develop in particular between this order and the New Orleans-Mississippi order (Order 94) because the low minimum in-area sales requirement (1500 pounds per day on routes) adopted herein is also provided for in the adjoining New Orleans-Mississippi market. Complentary provisions between the two orders should provide administrative guidance to resolve conflicts regarding regulation of a plant that qualifies for pooling under both Federal orders.

A distributing plant that has route disposition in both marketing areas should be regulated in the market in which such plant has the greater route sales. However, if a plant that has been regulated under this order should have greater route disposition in another markting area, the plant should retain pool plant status under this order until the third consecutive month in which it has greater route disposition in the other marketing area. This procedure would limit the casual, disruptive shifting between orders on a month-by-month basis that can occur when intermarket distribution results in qualifying a distrubting plant for pool status under more than one order.

Similarly, the new order should recognize that lock-in provisions for distributing plants also are provided under other orders. In that regard, a complementary provision is adopted in the new order to allow a distributing

plant to continue to be regulated under the other Federal order even though it has greater route sales in the Alabama-West Florida marketing area. In this situation, a distributing plant in Order 94, for example, would retain its pool status under Order 94 until the third consecutive month its route disposition in this marketing area was greater than in the Order 94 marketing area.

A supply plant that meets the shipping requirements of this order and another Federal order but which has greater shipments to distributing plants regulated under the other order should be pooled under the other order. Also, a supply plant pooled under another Federal order on the basis of its automatic pool plant status would not be a pool supply plant under the Alabama-West Florida order even if such plant met the shipping requirement under this order.

In addition, certain types of plant operations that are exempt from the pooling provisions of the order should be specifically excluded from the order's pool plant definition. In that regard, the term "pool plant" shall not apply to a producer-handler's plant or a governmental agency plant.

Nonpool plant. The new order should include a definition of "nonpool plant." Under the order, a nonpool plant would mean any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The "nonpool plant" definition sets forth five specific categories of plants that cannot be pool plants under the order. They are adopted essentially as proposed by the order proponent.

A definition of "nonpool plant" is provided in the new order to facilitate the formulation of the various order provisions as they apply to such a plant. The various types of nonpool plants are described further hereinafter.

An "other order plant" would be a plant that is fully regulated under another Federal order. As such, it cannot be a pool plant under this order.

A plant operated by a "producer-handler", as defined in this or any other Federal order, would be considered a nonpool plant. Due to the nature of the operation, as discussed later, such a plant is specifically exempt from pool status.

A "partially regulated distributing plant" also would be considered a nonpool plant. A partially regulated distributing plant would be a distributing plant that does not qualify as a pool distributing plant, an other order plant, a producer-handler plant, or a governmental agency plant. Generally, such a plant would be a distributing plant that has route disposition in the defined marketing area, but not to an extent that would qualify it for pool status under the order.

An "unregulated supply plant" means a supply plant that does not qualify as a pool supply plant, an other order plant, a producer-handler plant, or a governmental agency plant. In essence, it is a plant that transfers milk to pool distributing plants, but not to an extent that would qualify it for pool status under the order (less than the specified percentage of its receipts from dairy farmers is transferred to pool distributing plants).

As suggested by the order proponent and adopted herein, a distributing plant operated by a governmental agency (Federal, state, or local) would also be included among the nonpool plants specified in the order.

The proponent's witness testified that he was not aware of any distributing plant operated by a governmental agency which would qualify for exempt status under the new order. However, he indicated that such a self-contained operation which runs its own dairy farm, processing plant, and distributes such milk at a plant store or on a college campus should not be fully regulated under the order. He further testified that such an operation would not be a competitive factor in the overall market and for this reason should not be pooled. Accordingly, as suggested, the order should recognize the possibility of such operations in the future by extending nonpool plant status to them.

Handler. The impact of regulation under an order is primarily on handlers. A handler definition is necessary to identify those persons from whom the market administrator must receive reports, or who have financial responsibility for payment for milk in accordance with its classified use value. As herein provided, the following persons are defined as handlers under the order:

(1) The operator of one or more pool plants;

(2) A cooperative association with respect to producer milk that is picked up at the farm and delivered to a nonpool plant as diverted milk for the cooperative's account;

(3) A cooperative association with respect to milk of a producer that is picked up at the farm and delivered to a pool plant of another handler for the cooperative's account;

(4) The operator of a partially regulated distributing plant;

(5) A producer-handler;

(6) The operator of an other order plant from which milk is disposed of in the area; and

(7) The operator of an unregulated supply plant.

All of the categories of handlers listed above, with the exception of the operator of an unregulated supply plant were proposed by the order proponent and are common to most milk orders. Each person who may have a reporting requirement or may incur a financial obligation under the order should be designated a handler. This will assure that all information necessary to determine a person's status under the order can be readily determined by the market administrator. For this reason, the operator of an unregulated supply plant and the other persons listed above should be defined as handlers under the new order.

A pool plant operator who receives milk from producers should be the responsible handler for such milk. As the responsible handler, such person should report, in the detail prescribed by the market administrator, the quantities of milk received from each producer and each other source. Such operator also should be responsible for reporting certain other information deemed necessary by the market administrator in order to determine the utilization of producer milk. Such handlers should be responsible for making payments to producers, cooperative associations and the producer-settlement fund in accordance with the terms of the order.

A cooperative association should be a handler under the order for farm bulk tank milk moved by the cooperative to a pool plant or diverted to a nonpool plant. In the case of such movements to a pool plant, a cooperative should be the handler for milk received for its account from the farm of a producer that is delivered to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative. However, should there be a mutual agreement between the cooperative and the pool plant operator whereby such operator agrees to be the handler for the milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the cooperative need not be the handler for such milk.

Requiring a cooperative to be the handler on milk picked up for its account at the farm of a producer and delivered to a pool plant provides a practicable basis for the complete accounting of such milk. It also recognizes the current handling arrangements used by the cooperatives operating in the market in allocating their milk among distributing plants.

A witness for the order proponent testified that some plants which would be fully regulated by the proposed order buy their milk supply from the cooperative on the basis of weights and tests taken at the farm by the association. In such circumstances, it is only the cooperative that has the opportunity to measure and sample the milk of individual producers that is received at a plant. In the absence of any agreement by the plant operator to be the handler on such milk, the cooperative must be the responsible handler for the milk as it leaves the farm.

Under the terms of the attached order, the pool plant operator's obligation on milk purchased from a cooperative as a "bulk tank handler" is the same as for producer milk received directly from the farm of an individual producer. The plant operator must account to the pool for the milk according to the classification assigned to the milk based on the plant's utilization. The pool plant operator in turn settles with the cooperative on the basis of the uniform price for the milk. Under this arrangement, the pool plant operator is obligated to the producer-settlement fund, the administrative fund and the cooperative on the quantity of milk the cooperative delivers to such handler's pool plant directly from the farms of producers. The cooperative, in turn, is obligated to the producer-settlement fund and administrative fund on only that portion of milk picked up for its account that exceeds the quantity delivered to pool plants.

This accounting and payment procedure for bulk tank milk received from a cooperative will simplify the accounting for such milk by the pool plant operator. It will facilitate the administration of the order with respect to such items as financial responsibility, enforcement, and subsequent audit adjustments that may arise. Since the actual use of milk reflects the receiving pool plant's operation, it is reasonable that the responsibility for the accounting and payment of such milk placed directly on such pool plant operator.

The attached order also provides that a cooperative could be a handler on the milk of a producer which it diverts for its account from a pool plant to a nonpool plant. This handling arrangement will facilitate the movement of milk not needed for fluid use to nonpool plants for manufacturing. It also will assist the principal cooperatives in balancing supplies among the several distributing plants serving the market.

Under this handling arrangement, the diverting cooperative would be obligated to the producer-settlement and administrative expense funds on the diverted milk. Conversely, the operator of the nonpool plant that received the milk from the diverting cooperative would not incur an obligation on such milk under the order.

The new order should afford all cooperatives in the market flexibility in the arrangements under which they sell milk to pool plants or dispose of reserve supplies. If it so chooses, a cooperative should be able to pick up the milk of nonmember producers along with the milk of members for delivery to a pool plant or diversion to a nonpool plant. This procedure will enable the cooperative to act as the marketing agent for a nonmember producer who has contracted with the cooperative to market his or her milk. Nothing in the order would require a cooperative to pick up the milk of nonmenber producers. It would provide, however, that when a cooperative does pick up milk of nonmember producers on trucks under its control, it must assume varying degrees of responsibility with respect to such milk, depending on the handling arrangements made.

The Capper-Volstead Act provides the criteria by which cooperative associations are determined to be qualified cooperatives under the Agricultural Marketing Agreement Act. With the adopted handler definition, the new order would be consistent with that provision of the Capper-Volstead Act which recognizes that cooperatives "may deal in the products of nonmembers" and which limits such dealings to amounts not greater in value than those "handled by it for members."

Producer-handler. The order should exempt "producer-handlers" from the pricing and pooling provisions of the order.

Experience under Federal orders has demonstrated that effective regulation can be insured without the full regulation of individuals who essentially process and distribute milk produced on their own farm and who buy no milk from other dairy farmers. Such operations are basically self-sufficient in that they rely primarily on their own farm production and assume the burden of maintaining the necessary reserve supply of milk associated with their fluid milk operation and of disposing of any daily or seasonal surpluses they may produce. Because of the costs associated with producing all of the milk needed for their fluid sales and handling the reserve supplies, producer-handlers seldom are able to gain any competitive edge in the marketplace by virtue of their exempt status.

Although the specific order language adopted with respect to producer-handlers differs somewhat from what the order proponent suggested, the basic intentions of the cooperatives are accommodated under the provisions adopted herein.

As proposed by the order proponent and adopted herein, a "producer-handler" would be any person who operates a dairy farm and a distributing plant from which there is route disposition in the marketing area. Such persons would be permitted to supplement milk production on their own farms with purchases from pool plants and plants fully regulated under other Federal orders. A producer-handler operation would lose its exempt status by disposing of milk from other sources in a fluid milk product (other than by the fortification process). Such person also must satisfy the market administrator that the management and operation of the dairy farm and processing plant are at the personal risk of the producer-handler.

A question was raised at the hearing in connection with the cooperative's proposal to permit a producer-handler to buy unlimited quantities of fluid milk products from pool plants. It is intended that producer-handlers not have a significant advantage over fully regulated handlers when they are permitted to purchase supplemental milk. Since the milk transferred from a pool plant to a producer-handler would be accounted for under the order as a Class I disposition of the pool plant, no significant advantage would result for the producer-handler. Nevertheless, the principal basis for excluding producer-handler operations is that they are primarily self-sufficient, i.e., they bottle and distribute essentially their own milk production. Thus, it is anticipated that supplemental purchases would be relatively small.

The record indicates that there are only two operations that would qualify as producer-handlers under the proposed order. One is located in the Huntsville, Alabama, area and another is in the Dothan, Alabama, area. Both were described as relatively small operations. There is no indication as to whether these operations obtain supplemental supplies from other sources. While there is no basis in this record for limiting supplemental purchases, the matter can be reviewed later in light of actual operating experience under the order.

There was considerable discussion at the hearing about whether a producer-handler also should be permitted to buy supplemental milk from pool plants

regulated under other orders. A witness for the order proponent testified that he did not believe a producer-handler could gain a competitive advantage over other pool plant operators on such purchases, since the milk would have to be accounted for at the Class I price under the other order and transportation costs would have to be added. The cooperative preferred, however, to limit supplemental milk purchases by producer-handlers to pool plants regulated under this order because such purchases would enhance this market's uniform price. However, because no competitive advantage can be obtained when a producer-handler buys fluid milk products from plants regulated under other Federal orders, it is provided herein that supplemental purchases by producer-handlers may be made from pool plants under this order and from plants fully regulated under other Federal orders.

A producer handler's exempt status would be conditioned on certain other methods of operation by such a person. For instance, such a handler would not be permitted to reconstitute or convert milk products into fluid milk products have a surplus value and, if such activities were permitted, would place the producer-handler at a significant competitive advantage over regulated handlers in terms of product costs. This would not, however, prevent a producer-handler from buying Class II and Class III milk products from any source for distribution in the same form along with such handler's fluid milk products. Nor would it prevent a producer-handler from increasing the nonfat milk solids content of the milk produced on such person's own farm or purchased from pool plants by fortifying a fluid milk product.

A producer-handler's status also would be contingent on such person proving to the market administrator that the operation of the dairy farm and processing plant in question are at his/her risk. An exemption from the pooling and pricing provisions for such a person is based upon the basic self-sufficiency of the total operation. Accordingly, no other person should be permitted to share the risk involved with the operation of a producer-handler's farm or plant. All resources necessary and incidental to his/her own farm production of milk must be his/her personal risk. Similarly, all risk associated with the operation of the processing plant must be that of the producer-handler.

Producer. The term "producer" defines those dairy farmers who constitute the regular source of supply for the market. The producer definition adopted herein follows closely the one proposed and supported by the order proponent.

Producer status under the order should be provided for any dairy farmer who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk is received at a pool plant directly from the producer's farm or is picked up at the farm by a cooperative as a bulk tank milk handler for delivery to a pool plant. Producer status also should be accorded to a dairy farmer who has an established association with the market and whose milk is diverted from a pool plant to a nonpool plant by a cooperative association or a pool plant operator, either for fluid use or for surplus disposal.

To establish a producer's association with the market and to insure the marketability of such producer's milk, it is reasonable to require that a dairy farmer's milk be received at a pool plant each month to qualify such dairy farmer's milk for diversion to a nonpool plant. The "touch base" requirement is discussed more fully in the findings dealing with the definition of producer milk under the new Alabama-West Florida order.

The order would provide an exemption for producer-handler operations and for plants operated by a governmental agency. Since these operations are exempt from the order's pricing and pooling provisions, milk which is excess to the needs of such operators should not be treated as producer milk when it is moved directly from the farms of such operators to a pool plant. Accordingly, the producer definition adopted herein would specifically exclude producer-handlers and governmental agency plants. Any such milk delivered to a pool plant from such operations would be other source milk.

In addition, provision must be made to preclude the possibility of a dairy farmer being a producer under two orders with respect to the same milk. In this regard, the producer definition should exclude a dairy farmer with respect to milk which is received at a pool plant under this order by diversion from a pool plant under another order if the dairy farmer is a producer under the other order with respect to such milk and the milk is allocated to Class II or Class III use under this order. Also, the definition should exclude a dairy farmer with respect to milk which is diverted to a pool plant under another order from a pool plant under this order if any portion of such person's milk is assigned to Class I milk under the other order.

Producer milk. The "producer milk" definition is intended to define the milk that would be priced and pooled under the order. The definition adopted herein contains the basic features suggested by the order proponent.

"Producer milk" would include milk of a producer that is (1) received at a pool plant directly from such producer by the operator of the plant; (2) received by a cooperative association acting as a bulk tank handler; or (3) diverted by a cooperative association or a pool plant operator from a pool plant to a nonpool plant that is not a producer-handler plant.

When milk is not needed at a pool plant, it usually is diverted to a nonpool plant where it is used to produce manufactured milk products. Hence, the order should provide for "diversions" to nonpool plants by pool plant operators and cooperative associations within certain specified limits to insure that the pool distributing plants in the market are adequately supplied first. With respect to the limitations on such movements, a portion of an individual producer's milk would have to be received at a pool plant each month to qualify the producer's milk for diversion to nonpool plants during the month. In addition, handlers (pool plant operators and cooperative associations) would be limited in the total quantity they may so divert each month.

The order proponent suggested that pool plant operators and cooperative associations be permitted to divert an amount equal to one-third of the producer milk physically received at pool plants during the months of seasonally short milk production. In support of the proposal, the proponent's witness testified that the proposed diversion allowance would be adequate to accommodate the surplus disposition requirements of handlers supplying milk for the market. He also indicated that his producer group would rarely if ever need to divert as much as 25 to 30 percent of its milk supply in any month.

Proponent further suggested that 2 days' production of each producer should be received at a pool plant during each of the flush producton months of March through July to qualify such producer's milk for diversions to a nonpool plant during each such month. During each of the months of August through February, proponent suggested that the requirement be 6 days' production.

The witness for proponent testified that these are minimum requirements and he would not be opposed to higher "touch-base" requirements for individual producers. He also stated that

based on his knowledge of supply-demand conditions which exist in the general area, the milk of all producers will be needed more than half of the time to supply the fluid milk requirements of the market's distributing plants. He further testified that insuring the delivery of the minimum days' production of each producer's milk to pool plants each month would not result in additional transportation costs for the cooperative.

DI proposed a "touch base" requirement for each individual producer of 4 days' production in each of the months of February through August and 10 days' production in each of the other months of September through January. In support of its higher delivery requirements to pool plants by individual producers, a witness for DI testified that if producers are a regular part of the necessary reserve suppy for this market, it would result in little, if any, additional transportation costs to deliver the minimum number of days' production of each producer's mik to pool plants each month. He contended that when milk supplies not closely associated with the market's fluid milk needs become attached to the market it is costly to the cooperative in terms of a reduced blend price. The DI witness stated that the cooperative will most likely have to ship production of 20 or more days of each producer's milk to pool plants during the months of September through January to furnish the fluid milk requirements of its pool distributing plant customers.

An independent producer proposed that at least one-half of an individual producer's milk should be required to be received at a pool plant each month to qualify such dairy farmer's milk for diversion to nonpool plants. He testified that, in his judgment, the proposed touch-base requirement of 2 days' production (one delivery for producers on every-other-day delivery) was inadequate. He contended that higher delivery requirements would be in his best interest in addition to the best interests of other Alabama producers.

In its post hearing brief, the order proponent (AMP) supported the DI touch-base requirements of 4 and 10 days' production for individual producers. Both cooperatives also repeated their contention that these requirements would not result in additional hauling costs to their associations because more than the minimum number of days' production for each individual producer would be received at pool plants.

Southern Milk Sales, Inc., in its brief urged that the touch-base requirements be 70 percent of a producer's milk (21 days' production) in the fall months and at least 50 percent (15 days' production) in the spring months to protect the integrity of the blend price and to assure consumers an adequate supply of milk to meet their needs.

The limits on total diversions of producer milk to nonpool plants by a handler should be established at a rate that will accommodate the market's needs to efficiently dispose of milk not needed for fluid use. At the same time, it is necessary to assure that milk supplies will be available for fluid use.

It is apparent from the testimony that cooperatives could meet their needs for handling reserve milk dispositions with a total diversion limit of 20–30 percent of their total supplies. DI, for example, indicated that about 80 percent of its producers' milk would be needed for fluid use. AMP indicated that diversions would rarely be as much as 25 percent. Southern Milk Sales' suggested touch-base requirement of 70 percent for individual producers in the short production months would leave 30 percent of their production that would not be required to be delivered to pool plants. There was no testimony by handlers on the need to divert the milk of independent producers.

Based on the evidence noted above, it is concluded that handlers' diversions of milk to nonpool plants should not exceed an amount equal to 30 percent of the milk physically received at pool plants during the month. This is slightly less than the order proponent proposed (30 percent of physical deliveries to pool plants is equivalent to 23 percent of total supplies). Nevertheless, it should adequately serve the purpose of providing an efficient method for disposing of milk not needed for fluid use in the market.

A pool plant operator, other than a cooperative association, should be allowed to divert any milk that is not under the control of a cooperative that is diverting producer milk during the month. The total quantity of milk that such plant operator may divert during any month should be limited to 30 percent of the producer milk physically received at such plant during the month. Likewise, a cooperative association should be allowed to divert milk for its account. In this case, the percentage limit should be 30 percent of the cooperative association's producer milk that is delivered to and physically received at pool plants during the month.

The diversion allowance for handlers should apply in each month. The record indicates that a 30 percent allowance will accommodate handlers' needs in the flush production months, and thus no problems should be experienced by such handlers with the same allowance in the other months. In addition, since plants will be required to meet specified performance standards to attain pool status each month under the new order, a diversion allowance should be specified for handlers on a year-round basis.

The diversion allowance provided herein for handlers establishes the maximum quantity which cooperatives and pool plant operators may divert each month. Having set that allowance at an appropriate level, the individual producer "touch-base" standard should be set at a minimal level in order to allow handlers the maximum flexibility to receive milk from producers in the least costly manner.

Marketing efficiency is optimized when a handler can decide, with the minimum amount of interference, how and where to move milk supplies under such handler's control. Producers supplying a particular pool plant can be widely dispersed. For this reason, a handler may receive milk from several farm routes, some of which likely would be nearer to the plant than others. Thus, it would be more economical to receive the milk of those producers located closest to a handler's plant on a regular basis and to receive the milk of more distant producers only when the handler needs the extra milk. Of course, the reverse would also be true for the disposal of the reserve milk. The handler would want to divert to nonpool manufacturing plants the milk of the distant producers more often than the milk of those producers who are located closest to the pool plant, assuming that the manufacturing plant is located in the outer reaches of the milk shed or beyond, as is likely the case.

It is reasonable, however, that the order include a minimal "touch-base" provision that would require each producer's milk to be received at a pool plant each month. For this purpose, DI's proposed requirements, which would vary seasonally, should be adopted. To qualify a producer's production for diversion to nonpool plants during the month, 10 days' production would have to be delivered to a pool plant during each of the months of September-January and 4 days' production would be required in each of the months of February through August. In view of the anticipated supply-demand situation in the proposed market, the touch-base requirement should apply throughout the year. This procedure is consistent with requiring pool plants to meet monthly performance standards and specifying

monthly diversion allowances for handlers.

As indicated, a seasonally higher requirement would apply in the months of September through January and a lower requirement would apply in the months of February through August. The peak demand for milk in this market occurs on at least four days each week, or a minimum of 16 days each month. On these days, practically all of the available milk of producers associated with the market is needed at distributing plants. It is anticipated that producers on every-other-day pick-up would make a least 8 deliveries (16 days' production) to distributing plants on such peak days. Thus, A touch-base requirement of 10 days' production (five deliveries for producers whose milk is picked up every other day) each month September through January is reasonable. Such a standard is adequate to establish that a producer is eligible to have milk diverted to a nonpool plant during the months when production is short relative to the demand for Class I milk.

During the months of February through August, only four days' production of each producer would have to be received at a pool plant to qualify such producer's milk for pool participation. During these months, the market's fluid needs generally would require a lesser proportion of the available milk supply. Thus, greater flexibility in disposing of the reserve milk supplies would be desirable, and would be provided by not requiring as much of each producer's milk to be delivered to a pool plant.

DI suggested that if a supply plant's qualification is based solely on shipments to distributing plants as the order proponent suggested, then the individual producer touch-base requirement should be met by deliveries to pool distributing plant only. It is unnecessary, however, to specify that only deliveries to pool distributing plant may establish a producer's association with the fluid market.

A supply plant's pool status would be determined solely on the basis of shipments to distributing plants. If the supply plant meets the shipping requirements of the order and thus becomes a pool plant, it has demonstrated an adequate association with the fluid market. Dairy farmers delivering milk to the supply plant are thus themselves with the fluid market.

The order should provide a procedure to be followed for determining pool status of the milk if a pool plant operator or cooperative association diverts milk in excess of the percentage allowanced specified in the order. As adopted herein, the excess quantity of milk would not qualify as producer milk and would not be priced under the order. In such cases, the diverting handler would be required to designate the dairy farmer deliveries that should not be considered producer milk. Absent such designation, no milk diverted by the handler would be producer milk. This method of identifying overdiverted milk was proposed by the order proponent.

Also, the order should provide the method suggested by the order proponent to determine which producers' milk should not be qualified as producer milk when a cooperative's diversions from a pool plant to nonpool plants would cause such plant to lose its pool status. In such cases, the cooperative should be responsible for indentifying which dairy farmers' milk would not be producer milk. Since the cooperative is the accountable handler to the pool for the producers' milk, such handler is in the best position to identify those producer deliveries that would not be producer milk for purposes of assuring continued pool status for the plant involved.

If the cooperative fails to designate the dairy farmers' deliveries that are to be excluded as producer milk, no milk diverted by the cooperative to nonpool plants would be considered producer milk. This procedure is consistent with the method used to specify which dairy farmer deliveries should not be considered producer milk when a handler diverts milk in excess of the precentage allowance specified in the order.

As proposed by AMP, milk diverted from a pool plant to a nonpool plant would be priced at the location of the nonpool plant where the milk is physically received. If diverted milk were priced on the basis of the pool plant from which diverted, different prices could apply for milk received at a pool plant and a nonpool plant at the same location. The pricing method adopted herein is consitant with the requirement of the Act that milk be uniformly priced to all handlers based on the location at which delivery of the milk is made.

The hearing notice included a handler proposal to permit diversions between pool plants. At the heaing a handler spokesman indicated that the proponents had decided to withdraw their proposal.

Other source milk. An other source milk definition should be adopted for the new Alabama-West Florida order. In addition to milk received from producers, a regulated pool plant may receive milk or milk products from other sources. An "other source milk" definition will serve to specifically identify the various categories of such receipts.

The order proponent suggested that the "other source milk" definition that was adopted when a uniform milk classification plan was provided for 30 Federal order markets on August 1, 1974, be included in the new order. There was no opposition to this proposal, which is adopted.

As provided herein, "other source milk" would be all skim milk and butterfat in a handler's receipts of fluid milk products or bulk fluid cream products from any source other than producers, cooperative association handlers, or pool plants. It also would include a handler's receipts of fluid cream products in packaged form from other plants. In addition, any milk products (other than fluid milk products, fluid cream products and products produced at the plant in the same month) from any source which are reprocessed, converted into, or combined with another product in a handler's plant during the month would be considered a receipt of "other source milk". Receipts of milk products (other than fluid milk products or fluid cream products) for which the handler fails to establish a disposition also would be included under the "other source milk" definition.

Although fluid cream products would be Class II products and would not be included in the order's fluid milk product definition, bulk fluid cream products should be treated in the same manner as fluid milk products for purposes of applying the other source milk definition. This procedure will facilitate the application of the other provisions of the order.

Receipts of fluid cream products, eggnog or yogurt (or any filled product resembling such products) in packaged form from other plants would be considered other source milk. These products are Class II under the classification plan provided for this market. Although no handler obligation would apply under the order provisions adopted herein with respect to such receipts, it is desirable for accounting purposes that receipts of packaged Class II products be defined as other source milk. This accounting technique will preclude the recordkeeping difficulties that might otherwise be experienced in accounting separately for inventories and sales of Class II products processed in the handler's plant versus those received at the plant in packaged form from other plants. As provided herein, such receipts of other source milk would be allocated directly to the handler's

Class II utilization, rather than being allocated to the extent possible to the handler's lowest class of utilization as is provided in some cases for other types of other source milk.

The order should provide that manufactured products from any source that are reprocessed, converted into, or combined with another product in the plant shall be considered as other source milk. For accounting purposes, such manufactured products would include dry curd cottage cheese received at a pool plant to which cream is added before distribution to consumers. When used to produce cottage cheese or lowfat cottage cheese, the receipts of dry curd would be allocated under the provisions adopted herein directly to the handler's Class II utilization. No handler obligation would apply under the order to such receipts.

The order also should provide that products manfactured in a pool plant during the month and then reprocessed, converted into, or combined with another product in the same plant during the same month not be defined as other source milk. For example, assume that a handler makes condensed skim milk from producer milk and then uses the condensed product in making ice cream. It is intended under this situation that the producer milk be considered as having been used to produce ice cream. The condensing operation is merely one of the steps performed by the handler in processing ice cream from raw milk.

Any disappearance of manufactured milk products for which the handler fails to establish a disposition would be considered other source milk. It is reasonable that each handler be required to account for all milk and milk products received or processed at the handler's regulated plant. Otherwise, a handler with inadequate records may have an opportunity to gain a competitive advantage over competitors who properly account for all of their receipts of milk and milk products. Specifying any unexplained disappearance of manufactured milk products as other source milk will contribute to a uniform application of the regulatory plan to all handlers.

Filled milk. Filled milk should be defined as any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

This definition and the treatment afforded such products under the order are consistent with the provisions and treatment of filled milk adopted in the Assistant Secretary's decision for all Federal orders issued October 13, 1969 (34 FR 16881). Official notice was taken of the 1969 decision at the hearing held June 23–July 2, 1980, for this market. The record evidence indicates that the findings and conclusions of the 1969 decision are equally applicable under current marketing conditions in the proposed marketing area.

Cooperative association. A definition of "cooperative association" should be adopted as suggested by the order proponent.

As provided herein, a cooperative association means any cooperative marketing association of producers which the Secretary determines, after application by the cooperative association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of, or marketing milk or milk products for its members.

Defining such an organization of producers will facilitate the formulation of the various other order provisions as they apply to such an association of producers.

(b) *Classification of milk.*

The statutory authority for Federal milk orders specifies that an order shall classify milk in accordance with the form in which or the purpose for which the milk is used. As proposed by proponent, the order should provide for three classes of utilization.

The products included in Class I milk and sold in the proposed marketing area for fluid consumption are required to be produced in compliance with the inspection requirements of a duly constituted regulatory agency. This is in contrast to the absence of such requirements for manufactured dairy products such as butter and hard cheese. Because of the extra cost of getting high-quality milk produced and delivered to the market in the condition and quantities required, it is necessary to establish a separate class for such milk to which a price above the manufactured milk price may be applied. The higher price for Class I milk must be at a level which, together with the prices applicable to other classes, will yield a "uniform" price that will encourage production of milk to meet the fluid requirements of the market.

Class I milk should include all skim milk and butterfat disposed of in the form of milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids. Skim milk and butterfat disposed of in any such product that is flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted likewise should be classified as Class I milk. Such classification should apply whether the products are disposed of in fluid or frozen form.

Skim milk disposed of in any product described above that is modified by the addition of nonfat milk solids should be Class I milk only to the extent of the weight of the skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

Class I milk should not include skim milk or butterfat disposed of in the form of evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, or whey.

Each product designated herein as a Class I product would be considered a "fluid milk product" as defined in the order. In addition to these fluid milk products, Class I milk would include any skim milk and butterfat not specifically accounted for in Class II or Class III, other than shrinkage permitted a Class III classification.

As provided, skim milk or butterfat disposed of as filled milk in fluid form shall be classified as Class I milk. This classification is identical to the treatment of filled milk in all Federal order markets. The basis for the uniform treatment of filled milk under this and all other Federal orders is set forth in the earlier findings concerning the definition of filled milk.

Class III milk should include products which are made from surplus Grade A milk and which compete in a national market with similar products made from manufacturing grade milk. These products include cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese), butter, any milk product in dry form (such as nonfat dry milk), any concentrated milk product in bulk, fluid form that is used to produce a Class III product, and evaporated or condensed milk (plain or sweetened) and evaporated or condensed skim milk (plain or sweetened) in consumer-type packages. Class III milk also should include any product not specified in Class I or Class II.

An intermediate class, Class II, should apply to certain products which can command a higher value than Class III products, but which must be competitively priced below Class I in order to compete with non-dairy substitute products or manufactured dairy products that can be used in making Class II products. Class II milk should include skim milk and butterfat disposed of in the form of a "fluid cream product," eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles one of these products. As defined in the order, "fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

Class II milk should also include bulk fluid milk products disposed of to any commercial food processing establishment at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages. In addition, it should include milk used to produce cottage cheese, lowfat cottage cheese, dry curd cottage cheese, milkshake and ice milk mixes containing 20 percent or more total solids, frozen desserts, frozen dessert mixes, and certain other products as specified in the order.

The classification scheme adopted herein was proposed by the order proponent and is identical to the uniform classification plan contained in many of the other Federal order markets. The plan was based on exhaustive hearings held on this issue in 1971 for 39 markets. The final decision on the uniform classification plan was issued February 19, 1974 (39 FR 9012). Official notice was taken of this decision at the hearing held June 23–July 2, 1980, for the Alabama-West Florida market. It contains a detailed discussion of the classification issue. Official notice also was taken of the Assistant Secretary's decision issued July 17, 1975 (40 FR 30119), which modified certain provisions originally adopted in the 39-market decision.

Proponent testified that this classification system (as modified in 1975) would be fully appropriate for the proposed order. Adoption of the uniform classification plan in this new order will coordinate these essential provisions with the same provisions under most other orders.

The record evidence indicates that the findings and conclusions of the above mentioned decisions are equally applicable under current marketing conditions in the proposed marketing area.

Classification of shrinkage. The Alabama-West Florida order should contain provisions for classifying skim milk and butterfat in shrinkage. The shrinkage provisions adopted herein are similar to the shrinkage provisions now provided in most orders.

Total plant shrinkage should be prorated between (1) those kinds of receipts on which the Class III shrinkage limitations apply, and (2) other receipts, principally other source milk in the form of fluid milk products requested for Class II or Class III use. To the extent that the quantity of shrinkage prorated to the first category exceeds the established Class III limit, the excess should be classified in Class I.

The shrinkage provisions provided herein recognize that shrinkage normally varies with the type of handling involved. More loss is usually experienced in plant processing than in merely receiving milk for delivery to another handler. Thus, with respect to milk picked up at producers' farms and delivered to a plant, a Class III shrinkage allowance of 0.5 percent for such milk is provided.

A Class III shrinkage allowance of 1.5 percent to cover milk lost in processing is provided for the pool plant operator. This provides a total of 2 percent Class III shrinkage allowance for such milk from producers in the receiving and processing operations.

The total shrinkage allowance applicable to a pool plant operator depends upon whether the plant operator purchases the milk at farm weights and tests or at plant weights and tests. The provisions allow the plant operator up to 2 perecent shrinkage in Class III if the milk is purchased on the basis of weights determined at the farm and butterfat tests determined from farm bulk tank samples. In this case, there is no shrinkage allowance for a cooperative association handler who may have delivered the milk from the farm to the pool plant.

As provided herein, when bulk milk is transferred to another plant, the shrinkage allowance to the transferor handler would be reduced at the rate of 1.5 percent of the quantity tansferred. This is similar to provisions now applicable under most orders.

In the case of milk diverted from a pool plant to a nonpool plant, a shrinkage allowance in Class III of 0.5 percent would be provided the diverting handler if the operator of the plant to which the milk is diverted purchases such milk on the basis of weights and tests determined at the plant. If the milk is purchased at farm weights and tests, no shrinkage allowance would apply for the diverting handler. This same procedure would apply to cooperative bulk tank deliveries to pool plants when similar handling is involved.

This division of the 2 percent shrinkage allowance, both in the case of deliveries from cooperative bulk tank handlers to plants and for transfers between plants, has been found practical and has been well accepted in Federal order markets where it now applies.

Shrinkage should be accounted for on an individual plant basis in the case of a handler operating more than one pool plant under the order. This procedure will promote plant efficiency in the Alabama-West Florida market.

Classification milk transferred or diverted to other plants. Some fluid milk products or fluid cream products may be disposed of by regulated handlers to other plants. It is necessary, therefore, to provide specific rules so that the classification of such movements may be determined under his order.

Under the adopted classification plan, fluid cream products would be classified as Class II products. If such products are transferred to another plant in packaged form, the skim milk and butterfat contained therein should be classified as Class II milk since these items are moved in final form. The classification of fluid cream products when disposed of in bulk form, however, is determinable ony by following the movement of the bulk product to its subsequent use. Thus, it is necessary that fluid cream products that are transferred in bulk from a pool plant to another plant be classified in a manner similar to that used in classifying transfers of bulk fluid milk products.

Some skim milk or butterfat may be transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant. Such transfers should be classified as Class I milk unless both handlers request the same classification in another class in their monthly reports to the market administrator and sufficient Class II or Class III utilization is available at the transferee-plant after the allocation of its receipts of other source milk. If the shipping plant received other source milk in the form of nonfat dry milk, for example, during the month, the skim milk and butterfat so transferred should be classified so as to allocate the least possible Class I utilization to the other source milk. If the

shipping handler received other source milk from an unregulated supply plant or an other order plant, the transferred quantities, up to the total of such receipts, should not be Class I to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee-plant.

Transfers from a cooperative bulk tank handler to the pool plant of another handler should be assigned classification pro rata with producer milk received at the plant.

The provisions governing transfers between pool plants described herein will contribute to obtaining the best possible utilization of producer milk. Such provisions will tend to insure that producer milk used in Class I will not be classified in a lower class when interplant shipments involve a pool plant with receipts of other source milk. Unless such safeguards are provided, a high-utilization plant could be used as a conduit for assigning milk obtained from nonpool sources for manufacturing purposes to a higher utiliztion (at the expense of producer milk) than it would receive by direct delivery to the plant at which it is actually utilized.

Skim milk or butterfat may be transferred or diverted from a pool plant to an other order plant in the form of a fluid milk product or transferred from a pool plant to an other order plant in the form of a bulk fluid cream product. The classification of such transfers or diversions shall apply only to the skim milk and butterfat in excess of any receipts at the pool plant from the other order plant.

The order should provide for the diversion of milk to other order plants for Class II or Class III use. Such provisions will foster the efficient handling of surplus milk in the market by permitting the disposal of such milk directly from farms to manufacturing plants in other markets, rather than having such intermarket movements limited to the more expensive method of transferring milk from one plant to another. With the safeguards adopted herein, returns to producers in the market to which the milk is diverted will not be affected by the processing of this surplus milk in their market since the diverted milk will continue to be pooled in the Alabama-West Florida market.

Fluid milk products transferred or diverted to other order plants and bulk fluid cream products transferred to such plants will be classified in accordance with the classes to which such milk is allocated under the other order. If information concerning the classification of transfers and diversions is not available to the market administrator in time to compute handler pool obligations, such transfers shall be classified in Class I, subject to adjustments when the information is available. In addition, the order should provide that if the other order provides for a different number of classes than the Alabama-West Florida order, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified in Class I and skim milk and butterfat allocated to other classes shall be classified as Class III milk. The order also provides that if a fluid milk product is transferred to an other order plant and such product is not defined as a fluid milk product under the other order, classification of such transfer shall be in accordance with the classification provisions of this order.

The order should prescribe a method for classifying the skim milk and butterfat in transfers from a pool plant to a producer-handler or in transfers or diversions from a pool plant to a governmental agency plant. If such skim milk and butterfat are in the form of a fluid milk product, such transfers should be classified as Class I milk. As described elsewhere in this decision, such a classification is necessary to assure that producers are not burdened with maintaining reserve supplies associated with the Class I sales of such operations.

Skim milk and butterfat in the form of bulk fluid cream products transferred from a pool plant to a producer-handler or a governmental agency plant should be assigned to the extent possible to the receiving plant's Class III use, and then to Class II use. If the producer-handler or governmental agency plant does not have enough utilization in these classes to cover such transfers, any remaining transfers should be classified as Class I milk.

The order also must prescribe a procedure for classifying transfers or diversions to a nonpool plant that is not an other order plant, a producer-handler plant, or a governmental agency plant. Bulk fluid milk products transferred or diverted and bulk fluid cream products transferred should be classified as Class I milk unless a lower classification is requested and the operator of the nonpool plant makes available to the market administrator books and records for the purpose of verifying the receipts and utilization of milk and milk products at the nonpool plant. To determine such lower classification, the nonpool plant's utilization must be assigned to its receipts of milk from various sources.

Under the adopted assignment priorities, the first step is to assign the nonpool plant's Class I utilization to its receipts of packaged fluid milk products from all federally regulated plants. Such receipts should receive first priority on the nonpool plant's Class I use since all orders provide that such packaged transfers from a pool plant to an unregulated nonpool plant shall be classified as Class I milk. Thus, any Class I route disposition of the nonpool plant in the Alabama-West Marketing area, and any transfers of packaged fluid milk products from the nonpool plant to Alabama-West Florida pool plants, would be assigned, first, to the nonpool plant's receipts of packaged fluid milk products from plants fully regulated under the Alabama-West Florida order and, second, to any such remaining packaged receipts from plants fully regulated under other Federal orders.

A similar assignment of any such remaining disposition (i.e., the aforesaid Class I route disposition and transfers of packaged fluid milk products) then would be made to the nonpool plant's receipts of bulk fluid milk products from pool plants and other order plants. Any other Class I disposition of packaged fluid milk products from the nonpool plant, such as route disposition in unregulated areas, would be assigned to any remaining unassigned receipts of packaged fluid milk products at the nonpool plant from plants fully regulated under any Federal order.

After these assignments, any Class I use at the nonpool plant that is attributable to the Class I allocation at a Federal order plant of fluid milk products transferred in bulk from the nonpool plant to the regulated plant would be assigned. Such use would be assigned first to the nonpool plant's remaining unassigned receipts of fluid milk products from plant fully regulated under the Alabama-West Florida order and second to any such remaining receipts from plants fully regulated under other orders.

Any remaining unassigned Class I utilization at the nonpool plant then would be assigned to the plant's receipts of Grade A milk from dairy farmers and unregulated nonpool plants that are determined to be regular sources of Grade A milk for the nonpool plant. Any remaining unassigned receipts of fluid milk products at the nonpool plant from plants fully regulated under any order would be assigned to any of the nonpool plant's remaining Class I utilization, then to its Class III utilization, and then to its Class II utilization.

Following these assignments, any receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants would be assigned to the nonpool plant's remaining unassigned utilization in each class.

Such assignment would be made in sequence beginning with the lowest class.

In determining the classification of any transfers or diversions from a pool plant to a nonpool plant, the utilization of any transfers from the nonpool plant to another unregulated nonpool plant also must be established. In this case, the same assignment priorities just outlined should apply also at the second nonpool plant.

The method herein provided for classifying transfers and diversions to nonpool plants accords equitable treatment to order handlers and also gives appropriate recognition to handlers in other regulated markets in the classification of milk transferred to a common nonpool plant. Giving highest use priority to dairy farmers directly supplying a nonpool plant recognizes that they are the regular and dependable source of supply of milk for fluid use at such plant. The proposed method of classification will safeguard the primary functions of the transfer and diversion provisions of the order by promoting orderly disposal of reserve supplies and in assuring that shipments to nonpool plants will be classified in an equitable manner.

Allocation of receipts to utilization. Because the value of producer milk is based on its classification, the Alabama-West Florida order must provide a procedure for assigning a handler's receipts from different sources to the handler's utilization for the purpose of establishing such classification.

The order proponent testified that the system of allocating handlers' receipts to the various classes should be the same as that adopted in the Assistant Secretary's decision dealing with the classification, allocation and pricing of other source milk issued July 7, 1964 (29 FR 9110), commonly known as the "compensatory payment" decision.

The "compensatory payment" decision dealt with the issue of integrating into each order's regulatory plan milk which is not subject to classified pricing under any order and receipts at pool plants from other order plants. The decision established a procedure for allocating over a pool plant's total utilization the receipts at the plant from all nonpool sources and for making payment into the producer-settlement fund on unregulated milk allocated to Class I.

Proponent's representative testified that the method developed for all Federal milk marketing orders as discussed in the 1964 decision is appropriate in the proposed marketing area and will coordinate these regulations with respect to the treatment of unregulated milk and other order milk with comparable regulations under other Federal orders.

The aforesaid decision sets forth the standards for dealing with unregulated milk under Federal orders and the system of allocation to be included in all orders. It describes the appropriate treatment of other order milk received at pool plants that is used for coordinating the applicable regulations on all movements of milk between Federal order markets. This record indicates that the findings and conclusions of the aforesaid decision are equally applicable under current conditions in the proposed marketing area.

The order also provides that handlers using certain types of other source milk (whether in the form received or in reconstituted form) in the processing of Class II products be permitted to have such other source milk allocated directly to their Class II uses. Under the classification plan provided herein, such other source milk to which direct allocation could apply would be limited to milk products (such as nonfat dry milk and condensed milk or skim milk) that are not fluid milk products or fluid cream products.

Handlers rely largely on producers for a regular supply of milk for the products herein included in Class II. The major use of other source milk in making these Class II products is the addition of nonfat dry milk to cream products, mainly half and half, and to skim milk being used for the manufacture of cottage cheese. On occasion, when producer supplies are short, handlers also may reconstitute nonfat dry milk for cottage cheese production. Condensed milk or skim milk may be similarly used. Handlers choosing to use such other source milk in this way should be permitted to have such milk allocated directly to their Class II utilization rather than allocated first to any Class III utilization they may have.

It is not intended that the Class II outlet for producer milk necessarily be reserved for local producers. This use class merely recognizes that some additional value attaches to producer milk used by regulated handlers in the Class II products. Pricing this milk at a level above the Class III price serves also to reduce the burden on the Class I price of attracting a supply of producer milk for the Class I market. It is not intended that producer returns be enhanced for the purpose of also attracting a full supply of producer milk for handlers' Class II uses. Accordingly, no obligation to the pool (commonly known as a compensatory payment) would be imposed on any other source milk which regulated handlers may use in Class II or on any Class II products that may be distributed in the market by nonpool plants, either directly on routes or through pool plants.

As long as the Class II price for producer milk remains in proper relationship with the cost of alternative supplies, it is not expected that this direct allocation of nonfluid other source milk to Class II will induce handlers to use other source milk in preference to producer milk for processing Class II products. Under the adopted Class II price, producers would represent in most circumstances the most economical source of milk for Class II use. As indicated elsewhere, this would be so with respect to the alternative use of nonfat dry milk, the type of other source milk most commonly used in Class II products.

Nonfat dry milk has certain advantages for handlers that producer milk cannot provide. It can be added easily to milk or milk products to increase their nonfat milk solids content. Also, its storability permits handlers to have a concentrated form of nonfat milk solids on hand at all times for emergency use. Nevertheless, the higher cost of nonfat dry milk relative to producer milk would tend to limit its use to only those situations where the nonfat dry milk has a distinct processing advantage for handlers.

No provision should be made for the direct allocation of a handler's Class II utilization of other source milk received in fluid form. Unlike the handling of nonfat dry milk, it would not be unusal for a handler to commingle receipts of fluid other source milk with receipts of producer milk. In this circumstances, it would not be possible to know just how much of the other source milk may have been used in the processing of a Class II product. The difficulty which a handler would have in demonstrating the actual use of fluid other source milk in a Class II product and the administrative difficulty in verifying such claimed use, warrants the allocation of such milk to Class III.

It should be noted that the order would provide for the specific allocation to a handler's Class II and Class III utilization of any receipts of bulk fluid milk products from an other order plant or an unregulated supply plant for which the handler requests a Class II or Class III classification. Such receipts would be allocated to the extent possible first to the handler's Class III utilization and then to his Class II utilization. This would be the case even if a Class II classification were requested by the handler.

The attached order provides that, in the case of a multiple-plant handler, each of the handler's pool plants shall be considered separately for purposes of allocating receipts to utilization. In accordance with the "compensatory payment" decision referred to earlier, however, certain receipts of milk from unregulated supply plants and other Federal order plants are to share in varying degrees with local producer milk in the receiving handler's Class I utilization at all of the handler's pool plants combined. The order, therefore, provides a procedure whereby the milk from unregulated supply plants and other order plants is classified on the basis of the handler's total system, but is assigned to classes at the pool plant of actual receipt. Under this procedure, the situation may arise where there is not enough utilization in a specific class at the plant of actual receipt to which such other source milk must be assigned (as determined from receipts and utilization of handler's entire system). In this case, an accounting technique is used for increasing the utilization of such class at the plant of actual receipt and making a corresponding reduction in the same class at one or more of such handler's other pool plants in the system. This technique, however, does not change the amount of milk to be accounted for at each plant or the classification of milk within the handler's entire system.

The new order should *not* provide that in an emergency the market administrator may waive certain allocation and pricing provisions that give preference to milk from regulated sources. Such a provision was proposed by five proprietary operators of plants that would be pool distributing plants.

A representative for Borden, Inc., which operates a plant at Pensacola, Florida, testified in support of the proposal. He related the need for such a provision to the procurement problems faced by the Pensacola plant. The plant receives about 75 percent of its milk supply from independent producers. The reminder comes from a cooperative.

The witness stated that the Pensacola plant at times is unable to obtain adequate supplies of milk from local sources. He testified that in the fall months, when milk production falls short of Class I needs, cooperatives normally allocates their supplies first to those plants that receive their total supplies from cooperatives. According to the witness, plants that receive only supplemental supplies from the cooperatives may have a problem obtaining additional milk under such circumstances.

The handlers' spokesman contended that absent the proposed emergency provisions, the operator of such plants have only two alternatives. One would be to buy 100 percent of their milk from independent producers, thus eliminating any reliance on supplemental supplies from cooperatives. A second option would be to buy all the plant's needs from a cooperative association. He expressed a view that it was not the intent of the order to cause either to happen.

At times the Pensacola plant has had to reach out and bring in "spot" loads of milk from as far as the Carolinas, Pennsylvania, and Wisconsin. Unless brought in as "producer milk" under a Federal order, or obtained from a plant that is a pool plant under another Federal order, such milk is "other source milk" and is assigned to the lowest priced classification under the local order. If any such other source milk is assigned to Class I, an additional charge or compensatory payment is required. It is this provision that the handlers propose be waived if the market administrator verifies that an "emergency" exists. "Emergency" was defined by proponents' witness simply as a situation where milk is not physically available in the market.

This proposal was opposed at the hearing by a spokesman for Dairymen, Inc. He stated the association's belief that such a provision would undermine the operation of the Federal order. Moreover, the cooperative maintained that adoption of such a provision would tend to lower prices to producers at a time when milk was most needed. According to the witness this would depress local milk production, which is the most economic source of supply for the area.

Counsel for AMP noted that the handlers' proposal was contradictory to AMP's proposal and stated the association's opposition to the proposal. However, AMP's brief of proposed findings and conclusions urged that the proposal be denied on the basis that the type of emergency referred to could be arranged through certain purchasing practices. The association's brief takes the view that adoption of the proposal would leave "a wide opening for substantial abuse of the Federal milk order system and in particular this proposed Alabama-West Florida order."

The proposal should not be adopted on the basis of the record obtained in this proceeding. A key element of the proposal is that the market administrator would need to verify that an emergency situation existed. Proponents' witness maintained that the market administrator could establish through a single telephone call whether any cooperative association milk is available for delivery to a handler's plant. This may be possible where cooperatives have joint arrangements to supply milk in the most efficient manner, as was the case in this market at the time of the hearing. However, there is no basis to conclude that such arrangements are permanently fixed or that other cooperative associations not involved in the arrangement will not be supplying milk to the market in the future.

The record shows, moreover, that cooperatives may negotiate prices for milk that would exceed the minimum prices established by an order. It is possible that a cooperative may demand a price higher than a handler prefers to pay. If milk is not made available to the handler at a lower price, the handler could claim that it cannot obtain milk and might contend that an "emergency" supply situation exists. In such a case, the market administrator would be unable to verify an "emergency" shortage of milk. Furthermore, any attempt to do so would inject the market administrator into the price negotiations, which goes beyond the duties and responsibilities involved in administering an order.

Another problem lies in proponents' intent that the type of relief sought should be available on a handler-by-handler (plant-by-plant) basis, i.e., the market administrator's decision on waiver thus would not be based on the total market supply and demand situation but rather on the supply problems of an individual handler. Thus, the waiver of certain allocation and pricing provisions could be granted to one handler, but not to others who received other source milk, but for some reason other than the type of emergency envisioned by the proponents. This latter point raises a basic question of handler equity because the proposed provisions for waiver would not be applicable on a marketwide basis.

It is noted that proponents' witness stated that the proposal should not provide a means for circumventing the classification, allocation, and pricing provisions of the order. The allocation provisions adopted for the Alabama-West Florida order are based on uniform provisions already incorporated into all orders. Absent compelling evidence to justify departing from such uniform provisions, the new order should include the allocation provisions as proposed by the order proponent. The record in this proceeding does not provide a basis for concluding that the waiver proposal can be adopted without

at the same time tending to undermine the classification pricing provisions of the Act. For the foregoing reasons, the proposal is denied.

Classification of end-of-month inventory. The order should provide for the classification of inventory on hand at the end of the month. Fluid milk products in either packaged or bulk form that are in a handler's end-of-month inventory should be classified as Class III milk. Ending inventory of fluid cream products, eggnog, and yogurt, when held in bulk form, likewise should be classified in Class III. Such products held in packaged form at the end of the month should be classified as Class II milk.

Inventories classified in Class III should be subject in the following month to reclassification in a higher class, as determined through the allocation of receipts to utilization. A charge to the handler at the difference between the Class III price for the preceding month and the Class I or Class II price, as applicable, for the current month would apply to any reclassified inventory.

Because of the regulatory treatment being accorded certain other source milk, it is necessary that fluid cream products, yogurt and eggnog on hand in packaged form at the end of the month be classifed in Class II, the class of expected ultimate use, rather than in Class III as would be the case for ending inventories of such products in bulk form. The higher classification will accommodate the treatment adopted herein whereby such products that are received at a pool plant in packaged form and disposed of in the same packages would be permitted to "pass through" the plant without any pool obligation or down-allocation. In this connection, the ending Class II inventory, as Class II inventory on hand at the beginning of the next month, would be allocated in such month directly to the handler's Class II utilization.

For the first month the order is in effect, a slightly different classification of inventory must apply. Beginning inventories of fluid cream products in packaged form normally would be allocated directly to a handler's Class II utilization. Such allocation assumes that the products were priced at the Class II price in the preceding month. Since this would not be the case for the first month under the new order, such inventories should be allocated in the first month to the extent possible to Class III, as in the case of inventories of fluid milk products and bulk fluid cream products. A reclassification charge should apply in the following month if a higher classification results.

(c) *Pricing of milk.* In order to promote and maintain orderly marketing conditions for the Alabama-West Florida market, minimum class prices for producers should be established at levels that reflect economic conditions affecting the market supply and demand for milk. Such prices should result in returns to producers that will encourage a supply of milk sufficient to meet the fluid needs of the market, plus a reserve to provide for daily and seasonal fluctuations in demand.

The Class I price must not be so high as to attract unneeded supplies to the market. On the other hand, the price should be high enough to encourage the production of an adequate quantity of high-quality milk required for the fluctuating daily and seasonal fluid needs of the market.

The Class II price should be high enough above the manufacturing milk price to compensate producers for at least a part of the cost of delivering Grade A milk to regulated handlers for cream products, cottage cheese, ice cream, and related items for which handlers want Grade A milk.

The Class III price must be fixed at a level that will insure that milk produced in excess of the Class I requirements of the market can be processed into Class III products and disposed of in competition with similar products from unregulated manufacturing plants.

The class prices and uniform producer prices for milk should be announced on a per hundredweight basis. Because the order would not establish different values for butterfat in each class, the class prices would not be annnounced for a particular butterfat content of milk. Uniform prices to producers, however, would be announced on a 3.5 percent butterfat basis, and handlers would be required to pay producers for their milk at the uniform price adjusted by a butterfat differential to reflect any variation from 3.5 percent in the butterfat content of their milk. These provisions are consistent with such provisions widely applicable throughout the Federal order system.

Class I price and in-area location adjustments. For an 18-month period beginning with the effective date of the order's pricing provisions, the Class I price for the Alabama-West Florida market should be computed by adding a Class I differential of $2.30 to the "basic formula price" for the second preceding month. The Class I price applicable at specific locations within the marketing area should be determined by adjusting the announced Class I price by the location adjustment established for the zone in which a plant is located. The in-area zones and applicable location adjustments are defined as follows:

Zone 1—Minus 20 Cents ($2.10)

Alabama Counties

Lauderdale, Limestone, Madison, Jackson, Colbert, Franklin, Lawrence, Morgan, Marshall, DeKalb and Cherokee.

Zone 2—No Adjustment ($2.30)

Alabama Counties

Marion, Winston, Cullman, Lamar, Fayette, Walker, Pickens, Tuscaloosa, Jefferson, Blount, St. Clair, Etowah, Calhoun, Cleburne, Shelby, Talladega, Clay, Randolph, Bibb, Chilton, Coosa, Tallapoosa and Chambers.

Zone 3—Plus 15 Cents ($2.45)

Alabama Counties

Sumter, Greene, Hale, Perry, Dallas, Autauga, Elmore, Macon, Lee, Russell, Choctaw, Marengo, Wilcox, Lowndes, Montgomery, Bullock, Washington, Clarke, Monroe, Conecuh, Butler, Crenshaw, Pike and Barbour.

Zone 4—Plus 37 Cents ($2.67)

Alabama Counties

Mobile, Baldwin, Escambia, Covington, Coffee, Geneva, Dale and Henry.

Florida Counties

Escambia, Santa Rosa, Okaloosa and Walton.

Zone 4a—Plus 20 Cents ($2.50)

Alabama County

Houston.

The basic formula price should be the average pay price for manufacturing grade milk at plants in the States of Minnesota and Wisconsin. The price for milk used for fluid purposes in the market has a direct relationship to the prices paid for milk used for manufacturing purposes. The Minnesota-Wisconsin price, or "M–W" price, used in determining the price for Class I milk gives appropriate consideration to the economic factors underlying the general level of prices for milk and manufactured dairy products. It is used as the basic formula price in all Federal order markets and is equally appropriate for use in the Alabama-West Florida order. The differential over manufacturing milk prices is necessary to reflect the added cost of meeting quality requirements in the production of milk for fluid use and the cost of moving it to market.

Proponent of the order proposed that the Minnesota-Wisconsin manufacturing milk price be the basic formula price each month. This price is an average of prices paid at a large number of manufacturing plants in the two States. Plant operators report the total pounds of manufacturing grade milk received

from dairy farmers, the total butterfat content, and the total dollars paid to dairy farmers for such milk f.o.b. the plant. These prices are reported on a current basis. The "M–W" price is announced by the Department for each month on or before the 5th day of the following month.

AMP proposed the Class I differential and the in-area zone location adjustments adopted herein. AMP proposed that its "Central zone (North)" (Zone 2 as adopted herein), which includes the Birmingham area, be the base zone for which no location adjustment would apply. The proposed in-area zone pricing system would have plus adjustments south of Zone 2 and a minus adjustment to the north.

The cooperative's spokesman testified that the proposed Class I price structure for the market would provide reasonable price alignment with nearby orders. He indicated that the proposed prices would be comparable to the prices now being paid by handlers in the market and should not result in higher consumer prices for milk.

DI presented testimony on hauling costs and the boundaries of the pricing zones, but did not present a formal proposal on the Class I price structure for the market. Meadow Gold testified on zone boundaries. No other parties presented evidence on the Class I price structure or opposed the AMP proposal.

A zoned Class I price structure is appropriate for the Alabama-West Florida marketing area because of the geographic relationship between supply and demand in the market. The record indicates that of the producers associated with the proposed market, 36 percent are located in Tennessee, 12 percent in Mississippi, 12 percent in Zone 1, 17 percent in Zone 2, 14 percent in Zone 3, 9 percent in Zone 4 (including 4a), and less than 1 percent in Kentucky. The marketing area has four population centers on a north-south axis—Huntsville, Birmingham, Montgomery, and Mobile-Pensacola. The 1978 population of the marketing area was distributed as follows: Zone 1, 16 percent; Zone 2, 38 percent; Zone 3, 18 percent; Zone 4 (including 4a), 27 percent. These statistics illustrate the geographic disparity between the location of milk supplies and the centers of demand. The Federal order price structure should be designed to attract an adequate supply of fluid milk to each of the population centers and a zoned price structure is an appropriate mechanism to accomplish this objective in the Alabama-West Florida market.

Class I prices in the Alabama-West Florida market should be aligned reasonably well with the pricing structure throughout the Federal order system. Class I prices applicable in most markets east of the Rocky Mountains generally are based on the Chicago Regional Federal order Class I price applicable at Eau Claire, Wisconsin, adjusted for transportation cost from that location to the local market at 1.5 cents per hundredweight per ten miles. This pricing structure has been adopted because the Minnesota-Wisconsin region is an area of surplus production that can serve as a source of reserve supplies for most markets. However, the Class I prices in some markets deviate from this formula because of local market conditions.

Class I prices in this market also should be aligned with the existing prices in surrounding Federal order markets. Alignment should be as close as possible to prevent serious marketing disruptions as a result of implementing a Federal order in the area. Price alignment with nearby markets should prevent handlers in Alabama and West Florida from being placed in an unfavorable competitive position or being given a competitive advantage over handlers regulated by other Federal orders in the region.

Close alignment of the price structure in this market with prices in the surrounding markets and the overall Federal order pricing structure, however, is not possible because of the pricing arrangements in the surrounding markets. To the north, the Class I price for the Nashville order is slightly lower than the Eau Claire, Wisconsin, Class I price plus transportation (at the 1.5-cent rate) to Nashville. Therefore, Alabama prices based on the Eau Claire price plus transportation would be somewhat high relative to the Nashville order price. The Alabama-West Florida market is bounded on the west by the New Orleans-Mississippi market, where prices increase from north to south under a zone pricing structure. To the east is the Georgia market, which has a large area subject to the same Class I price. For reasons stated earlier in this decision, a zone price structure with prices increasing from north to south is appropriate for this market. Alignment of zone prices with the New Orleans-Mississippi market is not difficult to achieve. The eastward extension of the existing Mississippi zone lines generally meets this objective, except for alignment with a group of 12 unregulated counties in northeastern Mississippi. However, a close alignment of the new order's price zones with the pricing in the Georgia market is not possible because the southern two-thirds of the Georgia marketing area (which covers most of the State) has a Class I differential of $2.30. Therefore, any attempt to align prices in southern Alabama and West Florida with both the Georgia price and the New Orleans-Mississippi price will not be successful. Nevertheless, a pricing structure must be provided for the new order within the constraints imposed by the above conditions.

The price structure proposed by AMP is a reasonable approach to reconciling the problems of price alignment in this market. The Eau Claire price adjusted to Birmingham at the 1.5-cent rate would be approximately $2.42, while the Nashville price adjusted to Birmingham by the same rate would be $2.14. The AMP proposal for a $2.30 Class I differential for the base zone at Birmingham represents a compromise between the national pricing system and the adjusted Nashville price. Moreover, a $2.30 differential at Birmingham would provide good price coordination on an east-west basis with the existing Federal order Class I differentials of $2.30 at Atlanta, Georgia, and Columbus, Mississippi. Therefore, $2.30 is a reasonably appropriate Class I differential for the region surrounding Birmingham. It should be reasonably adequate as a minimum Federal order price, together with the zone pricing structure adopted herein, to attract sufficient supplies of milk for the market.

The Class I price adopted for the order should be reviewed within 18 months of the date the order becomes fully effective. By such time, data relative to milk supplies and sales in the market will have been accumulated. This will allow for a careful re-examination of the appropriate Class I price level for this market at a public hearing.

The zone delineations proposed by AMP are only slightly different from the existing price zones as defined by the Alabama Dairy Commission (ADC). The AMP plan places each major metropolitan area in a separate zone and the location adjustments between zones generally reflect the 1.5-cent per ten mile rate. The AMP plan also places all distributing plants located in Alabama in the same zone as under the ADC regulation, except for a plant in Dothan, Alabama.

DI proposed that the AMP zone plan be amended by (1) moving six Northwest Alabama counties (Marion, Winston, Cullman, Lamar, Fayette, and Walker) from Zone 2 to Zone 1; (2) moving Cherokee County, Alabama from Zone 1 to Zone 2; and (3) moving seven East Central Alabama counties

(Bibb, Chilton, Coosa, Clay, Randolph, Tallapoosa, and Chambers) from Zone 2 to Zone 3. Adoption of this proposal would affect only one plant, the DI Flav-O-Rich distributing plant at Fayette. This plant would shift from Zone 2 to Zone 1, lowering the Class I differential for the plant from $2.30 to $2.10. The proposal was based on an analysis of retail sales patterns revealed in a sales survey which, according to DI, showed that the DI plan more accurately reflected the competition among handlers in the marketing area than the AMP proposal.

Meadow Gold, a fluid milk distributor, asked that Lee County, Alabama, be placed in Zone 2 rather than Zone 3 as proposed by AMP. This proposal would lower the Class I differential applicable at Meadow Gold's Opelika plant from $2.45 to $2.30. The Meadow Gold proposal was based on an analysis of data on sales patterns which purported to show that placing Lee County in Zone 2 would more accurately describe the market in which the Opelika plant competes for fluid milk sales.

The DI and Meadow Gold proposals refect the premise that pricing zones should represent the geographic region in which handlers compete for fluid sales. However, competition among handlers cannot be the sole criterion for drawing zone lines because the primay function of the Class I differential in Federal orders is to attract an adequate supply of milk for the fluid market.

The record indicates that in 1978 less than one-half of the milk needed for the fluid market in Alabama came from Alabama producers on an annual basis. Therefore, it is reasonable to conclude that handlers in the Alabama-West Florida market vigorously compete among themselves and with handlers in other markets for supplies of raw milk produced both within and outside of Alabama. In this circumstance, Class I prices at various plant locations must reflect the economic value that milk has to handlers at those locations.

Under the Class I price structure adopted herein for the market Class I prices would increase from north to south. This gradation of prices would reflect the additional value that milk has at the various plant locations relative to the value of milk in the more northern areas, such as in Tennessee where milk supplies are much more plentiful than in Alabama. Handlers in Alabama generally rely on local milk supplies to the extent possible. It is necessary, though, to procure milk from the heavier production areas in Tennessee. Producers in the Tennessee areas cannot be expected, however, to make their milk available to handlers in the deficit production areas in Alabama unless there is a sufficient price incentive. This is related largely to the cost of moving milk.

The Class I prices that would apply at various plants throughout the marketing area thus would represent the value of an economic service to handlers by distant producers who bear the cost of moving their milk to the handlers' plants. This is the case even where a handler draws his entire supply from producers located near his plant. In the absence of any local supply, the handler would have to procure milk from other areas. Thus, the value of milk at that location necessarily must reflect the cost of obtaining milk from reserve supply sources. Also, the economic value of the local milk supply at a given plant location is related to the local producers' opportunity to ship milk to other plants where the price is higher. If the local price is too low relative to this "opportunity" price at other locations, the local supply will be attracted to other areas.

The DI proposal to place the Flav-O-Rich plant at Fayette in Zone 1 is denied. The $2.10 Class I differential that would result from adoption of the proposal would not reflect the general economic value that milk delivered to the Fayette location has. Distributing plants that are relatively close to the Fayette plant are located at Birmingham, Alabama, and Columbus, Mississippi. The Class I price differential at Birmingham, even under the DI proposal, would be $2.30. Similarly, the Class I differential at the Columbus plant, which is regulated under the New Orleans-Mississippi order, is $2.30. Since all three locations lie generally on an east-west line, it is reasonable to establish a Class I differential of $2.30 at the Fayette location. A lower price at Fayette could jeopardize the attraction of adequate supplies at that location over the long run.

The Meadow Gold proposal to move Lee County, Alabama, from Zone 3 to Zone 2 also is denied. The record indicates that the Opelika plant obtains much of its milk supply from Alabama producers. It is presumed, then, that the Opelika plant is competing for local milk supplies with handlers located at Montgomery, Alabama, where a Class I differential of $2.45 would apply under the proposed order. It is recognized that a $2.30 differential applies under the Georgia order at a nearby distributing plant at Columbus, Georgia. However, over the long run, a $2.30 differential at Opelika could place the plant at a disadvantage in competing for raw milk supplies in its principal procurement area in Alabama.

The AMP proposal to create a special pricing provision for a plant at Dothan, Alabama, is adopted. The order should designate a separate Zone 4a that would be limited to Houston County, Alabama, where Dothan is located. This zone should have a plus 20-cent location adjustment rather than the plus 37 cents applicable in Zone 4. Although the proposals by DI and Meadow Gold also were in part premised on competition from unregulated or other order handlers, the 37-cent difference between Dothan and nearby Georgia handlers is substantially greater than the 15-cent difference between Opelika and Georgia handlers or the 20-cent difference between Fayette and the plant at Tupelo, Mississippi, which has been regulated under the Memphis order since July 1980.[5] Prior to July 1980, the plant at Tupelo was an unregulated plant. The special provision included for Houston County reduces the difference between the Georgia Class I differential and the Alabama-West Florida Class I differential applicable at Dothan to 20 cents, which is similar to the position of other Alabama-West Florida handlers who compete with other order handlers.

Out-of-area location adjustments. The Class I price at plant locations outside the marketing area should be the Class I price for Zone 2 plus or minus the following location adjustments:

(1) For a plant located in the Tennessee or Georgia counties included in the Tennessee Valley marketing area or Bledsoe County, Tennessee, the adjustment should be minus 20 cents ($2.10 Class I differential);

(2) For a plant located in the Nashville marketing area or Franklin, Grundy, Lincoln, Moore or Van Buren Counties in Tennessee, the adjustment should be minus 45 cents ($1.85 Class I differential);

(3) For a plant located outside the marketing area and north of a line extending through the northern boundaries of Georgia, Alabama and Mississippi and not located in the areas covered by paragraphs (1) and (2) above, the adjustment should be minus 20 cents and minus an additional 1.5 cents for every 10 miles or fraction thereof that such plant is from the nearer of the City Hall in Florence or Huntsville, Alabama;

(4) For a plant located outside the marketing area and south of the line

[5] Official Notice is taken of the Announcement of Uniform Prices for the months of July 1980 through May 1981, Memphis, Tennessee, Marketing Area, issued by the Market Administrator, P.O. Box 4225, Little Rock, Arkansas 72214.

through the northern boundaries of Georgia, Alabama, and Mississippi, and not in the State of Florida or the Georgia counties listed in paragraph (1) above, the adjustment should be the adjustment applicable at Mobile, York, Tuscaloosa, Florence, Huntsville, Gadsden, Opelika, or Dothan, Alabama, whichever is nearest; and

(5) For a plant located outside the marketing area and in the State of Florida, the adjustment should be plus 55 cents ($2.85 Class I differential).

AMP was the only party that proposed out-of-area location adjustments. AMP's objective in drafting the out-of-area location adjustment proposal was to align the Alabama-West Florida prices with the minimum prices in surrounding Federal orders so that the implementation of a Federal order in Alabama would not disrupt established marketing arrangements. The adjustments adopted by this decision follow closely the AMP proposal. However, the adjustments adopted for the Nashville and Tennessee Valley marketing areas are different.

The Nashville marketing area and the unregulated counties in South Central Tennessee outside the Tennessee Valley order are major sources of fluid milk for the proposed marketing area. For this reason, the Class I price applicable at plants in the Nashville marketing area and five unregulated counties must be low enough to reflect the cost of moving milk south into Alabama. The AMP proposal would have established a Class I differential of $2.10 for much of this area, including DI's plant at Lewisburg, Tennessee. However, this price would not recognize the cost of transporting milk into Alabama and would not encourage the movement of milk from a supply or balancing plant to distributing plants in the marketing area. For this reason, the location adjustment for this area should provide a Class I differential of $1.85, which is 25 cents lower than the adopted differential at Huntsville, Alabama. This 25-cent difference should provide an incentive for producers in South Central Tennessee either to deliver their milk to plants located in Tennessee but pooled on the Alabama-West Florida market and save hauling costs to Nashville or to ship directly to plants in the proposed marketing area and receive the higher price. The $1.85 Class I differential is identical to the Nashville Class I differential which provides for a uniform value of fluid milk in South Central Tennessee.

The decision calls for a minus 1.5-cent per ten miles adjustment for plants located north of the marketing area and not covered by any other location adjustment provision. This would align the Alabama-West Florida Class I price with the lower Class I prices under other Federal orders to the north that are nearer to the Nation's reserve supply [illegible]

Location adjustment credits. In conjunction with its pricing proposal, AMP proposed that a pool plant transferring fluid milk products in bulk form for Class I use to a pool distributing plant at which a higher Class I price applies be accountable for such products at the higher price applicable at the transferee-plant. Under the proposal, however, transferor-plants would receive a location adjustment credit against the higher price equal to the difference between the Class I differentials applicable at the two plants. This was intended to encourage the movement of milk to market centers for Class I use.

When the operator of a supply plant located in an outlying area ships milk to a distributing plant where a higher Class I price is applicable, the supply plant operator cannot pay both the higher price and the transportation costs for hauling the milk to the distributing plant. Thus, a lower Class I price is needed at the supply plant location to reflect the cost of moving the milk to the distributing plant. Such price reductions, however, reduce the total value of the pool. In addition, if supply plant milk replaces local milk going to a distributing plant for Class I use, this further reduces the total pool value. Thus, shipments from outlying supply plants to distributing plants should be made only when such shipments are necessary to meet the fluid milk needs of distributing plants.

Therefore, the limitations on location adjustment credits proposed by AMP are adopted. These provisions limit the amount of location adjustment credits to the transferee-plant's Class I sales that remain after subtracting receipts of milk from producers, cooperative bulk tank handlers, and packaged fluid milk products from other pool plants. Unnecessary transfers are further discouraged by the provision which gives priority in receiving credits to transferor-plants located nearest the transferee-plant. The adopted location adjustment provisions complement the zone price structure as a means of encouraging the movement of bulk fluid milk products to centers of demand for Class I use. However, the provisions will not give price credits to cover unnecessary hauling of milk between pool plants for other than Class I use.

Class III price. The Class III price should be the basic formula price for the month, as proposed by the order proponent.

Reserve milk disposed of in manufactured product uses should be priced at a level that will result in the orderly disposition of all excess supplies. Establishment of a price too high to clear the market of milk excess to fluid requirements would interfere with the orderly marketing of milk for both processors and producers. Fixing a price too low would encourage handlers to associate additional supplies with the market simply to obtain low-cost milk for manufacturing uses.

The Minnesota-Wisconsin price is the best available indicator of the value of milk used in butter, nonfat dry milk, and cheese, which are usually the last-resort uses for surplus milk. The M–W price is an average of the prices being paid by processors of these products who are meeting the competitive test of the unregulated marketplace. Use of the M–W pay price series for the Alabama-West Florida market will provide consistency between this order and other Federal order markets which also use the M–W price series as the basic formula price for pricing Class III milk. In addition, it achieves parity between regulated and unregulated plants since it provides the regulated manufacturer with essentially the same margin for processing as is experienced in the unregulated market.

Class II price. The price for Class II milk should be the basic formula price for the month, plus 10 cents. This price level, which was proposed by the order proponents, will obtain for producers some extra return for producer milk used in Class II products above its value in other manufactured dairy products.

Producers should be compensated for making high-quality milk available to handlers on a steady basis for use in Class II products. Experience in Federal orders throughout the country has shown that milk used in Class II can be priced somewhat higher than the Minnesota-Wisconsin price without impairing the market for producer milk. A 10-cent differential, as proposed, together with the Class I differential, will help to insure producers of a uniform price which will compensate them for the production of a steady supply of high-quality milk.

The order should not provide for advance Class II milk pricing as proposed by handlers. Under that proposal, the Class II price each month would be based on the Minnesota-Wisconsin price for the second preceding month. The proposal was supported on the basis that handlers are disadvantaged if they do not know the

raw product cost before they price and sell finished Class II milk products. The handler witness who testified on the proposal urged that it be adopted on the basis of evidence presented at the hearing.

At the hearing, the order proponent's spokesman stated a concern that the Class II price provisions of a new order for the Alabama-West Florida area should be the same as in surrounding markets to the east, north, and west. These orders are among a group of 29 orders that were involved in litigation concerning a denial of advance Class II pricing at the time uniform classification provisions were adopted for these orders in 1974. At the time that the hearing was being held on the Alabama-West Florida order, handlers in other areas were being invited to submit proposals for consideration at a contemplated hearing related to the pricing of Class II milk in the 29 orders. Thus, there was an expectation in the industry that a hearing would be held to consider the advance Class II pricing issue for this group of markets.

The proponent cooperative's spokesman at the hearing on this new order expressed a desire that the findings from any such hearing for the 29 markets be applied to the consideration of Class II pricing for the proposed Alabama-West Florida order.

Dairymen, Inc., also indicated support for the concept of advance Class II pricing, but opposed adoption of the handler proposal. The Association did not want a Class II pricing formula for the new order that would differ from what might result from any hearing on this issue for the 29 markets. DI held the view, reiterated in its brief, that it would be better to have an additional hearing on that issue in this market after a decision had been issued for the 29 markets.

In its brief, AMP also stated support for advanced Class II pricing in principle, but urged adoption of its proposed Class II price provisions rather than the handlers' proposal.

Advance Class II pricing should not be adopted on the basis of the record in this proceeding. The record indicates that the parties in this proceeding agree in principle that the Class II price should be announced prior to the month to which the price applies. Moreover, there also is evident a strong desire for alignment of provisions with surrounding orders. However, it is not possible to achieve both ends in this proceeding under the circumstances involved in the Class II pricing issue. It is noted that a hearing was held on proposals to change the announcement procedures for Class I and Class II prices in the 29 markets, but the proceeding was limited to those 29 orders.[6] Therefore, the Department cannot incorporate into this proceeding the evidence and findings that arise out of the 29-market proceeding. Moreover, the procedure adopted for the 29 markets for announcing Class II prices differs considerably from the procedure proposed by handlers for the new order. Accordingly, the Alabama-West Florida order should provide that the Class II price be determined as proposed by AMP. Any coordination of the Class II price provisions with other orders should be on the basis of another hearing.

Butterfat differential. The order should have a producer butterfat differential equal to .115 times the average wholesale price of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. This differential was proposed by AMP and is common to most other orders.

A butterfat differential reflects the incremental value of milk containing more or less butterfat than the standard announced level. Weighted average and uniform prices under the order will be announced for milk containing 3.5 percent butterfat. Milk containing less than 3.5 percent butterfat will be worth less than the 3.5 percent price, while milk testing above 3.5 percent will be worth more than the announced price. This adjustment will insure equitable payments reflecting such variations in butterfat content of milk delivered by individual producers.

The butterfat differential adopted herein is the same as provided in a decision to adopt uniform classification provisions in 39 markets (this decision has previously been noticed). Since the classification provisions of that decision are adopted herein, it is appropriate to provide also for the same butterfat differential. This is clearly in line with proponent cooperative's intent in this regard.

Use of equivalent prices. If for any reason a price or pricing constituent needed by the market administrator, in administering the order is not available, the market administrator is authorized by the order to use an equivalent price or pricing constituent as determined by the Secretary. Including such provision in the order will leave no uncertainty with respect to the procedure to be followed in the absence of any data customarily used and thereby will prevent interruption in the operation of the order.

(d) *Distribution of proceeds to producers.* Marketwide pooling of producer returns should be provided in the order as the means of distributing among producers the proceeds from the sale of their milk. Such pooling method will assure each producer supplying the market a proportionate share of the market's total Class I sales.

Record evidence indicates that 21 fluid milk bottling plants will most likely qualify for pooling under the new order. Most of these plants are primarily fluid milk operations with apparently high levels of Class I utilization. However, the record also indicates that three of these plants conduct significant by-product operations in conjunction with their fluid milk bottling operations. Because of this, the Class I utilization will vary somewhat from plant to plant and from month to month. For instance, the handler operating a distributing plant at Gadsden, Alabama, indicated that such plant's Class I utilization ranged from a low of about 70 percent to a high of 88 percent. Hence, while most of the plants in the market are primarily fluid bottling operations and handle little or no surplus milk, others utilize varying proportions of their supplies for manufacturing purposes. Under these conditions, a marketwide pool will facilitate the orderly marketing of producer milk by removing disruptive competition by producers for the high Class I use outlets. Under individual handler pooling, the type of operations conducted at a plant would be a determining factor in the price the plant could pay its producers compared to other plants.

A marketwide pool also will make it possible for producer associations and pool plant operators to divert any weekly or seasonal reserves of milk to nonpool plants and maintain continuous producer milk status for such dairy farmers if their milk is needed to fulfill the year-round requirements of the market. This pooling technique will assist further in apportioning among all producers the lower returns from reserve milk in excess of the market's fluid requirements. In the absence of marketwide pooling, this burden would vary by individual plants and groups of producers.

A marketwide pool thereby will contribute to market stability and the maintenance of an adequate and dependable supply of producer milk at reasonable prices.

Computation of uniform price. A key feature of marketwide pooling is the computation of prices to pay producers.

[6] Official notice is taken of the Assistant Secretary's decision, Docket Numbers AO-10-A54, et al., issued July 8, 1981 (46 FR 36151).

Under the order adopted herein, which includes a seasonal base-excess plan, a weighted average price would be computed each month. During the months of August through February, the weighted average price would be the uniform price and would be used to pay producers. Essentially, such price is the weighted average value of all of the milk in the pool. It would be computed by adding together the classified use value (or total pool obligation) of all the handlers in the market. This total value is then divided by the amount of milk in the pool to arrive at a "uniform price" for producers.

In the months of March through July, uniform prices for base and excess milk would be computed by the market administrator. During each of these months, each producer would be paid on the basis of the producer's deliveries of base and excess milk. The following findings on the base-excess plan describe the computation of the uniform prices for base and excess milk and the computation of an individual producer's base.

In order to compute the uniform price or prices the market administrator must first receive a report of receipts and utilization from each of the handlers in the pool.

Under the proponent cooperative's proposed order, handler reports of receipts and utilization would have to be postmarked on or before the 5th day after the end of each month or be delivered in person not later than the 7th day of each month. A witness for the cooperative contended that such reporting dates were needed to provide the market administrator with sufficient lead time to receive all of the reports, compute the marketwide pool and announce the uniform price or prices by the 11th day of each month.

A spokesman representing five handlers who would be fully regulated under the proposed order stated that the dates included in the proposed order would not provide handlers sufficient time to accumulate the data necessary to file their reports of receipts and utilization. As an alternative, the handlers proposed that such reports be mailed by the 7th of the month instead of the 5th or delivered in person by the 9th day rather than the 7th as proponent suggested.

In support of the handlers' proposals, the spokesman testified that many handlers in the proposed area have one or more branch sales offices located in cities considerable distance from the office where the reports are filed. He stated that it takes considerable time to accumulate the sales information and transmit it to a central location from which the information for such report will be accumulated and submitted to the market administrator. He also testified that a mailing deadline of the 5th would create an impossible situation for handlers in certain months considering how the weekends and holidays fall. He also stated that delivery in person would be costly and time-consuming for distant handlers who failed to meet the 5th of the month mailing deadline.

The order should provide that a handler's report of receipts and utilization is due on or before the 7th after the end of each month. Based on the evidence in this proceeding, any such report mailed on the 7th by a handler who is expected to be subject to the new order should be received by the market administrator within two days. Such timing will provide the market administrator with sufficient time to receive the reports, review and correct them for obvious errors, compute each handler's value of milk at classified prices, compute the uniform price or prices, and announce such price or prices by the 11th day of the month.

The order should not specify a different due date if the report of receipts and utilization is delivered in person. Accordingly, such reports shall be considered to be made on time if they are postmarked on or before the date specified in the order. If a handler elects to hand-deliver the report, it must be so delivered to the market administrator not later than the due date.

Allowing handlers one full week to accumulate and submit their monthly reports of receipts and utilization will maximize the number of work days provided for the office staff to prepare such reports. For instance, if reports were due by the 7th, handlers normally would have a minimum of five work days to accumulate, prepare and mail their reports; otherwise, they could have as few as three days to get their information assembled and in the mail with a due date of the 5th.

The five handlers also proposed that the due dates of the 7th and the 20th for reports of base milk by handlers (on an aggregate and individual producer basis) be postmark dates. The order submitted by the proponent cooperative did not indicate whether the due dates for such reports were receipt or postmark dates. However, since all reports postmarked on or before the due date specified in the order will be considered to have been made on time, no change in the proposed language is needed and the intentions of handlers in this regard will be accommodated.

All of the other dates (for reports, price announcements, and payments) specified in the order should be adopted as they were proposed by the proponent cooperative. It should be noted that the Georgia Federal milk order provides the same sequence of due dates for such activities as are adopted herein. The Georgia marketing area is very similar to the marketing area defined herein, essentially statewide. Like this market, it has several key metropolitan areas and the remainder of the area is predominately rural. There is no reason to believe that the same sequence of dates would not provide adequate timing under this new program.

Also, it should be noted that the dates for reports and payments adopted herein are similar to those provided in other Federal orders in the Southeast which are nearby and adjacent to this marketing area. Under the arrangement provided herein, handlers under the new order will be meeting about the same deadlines with respect to these reporting functions as handlers under nearby orders. Likewise, producers covered by this order will receive their payments at about the same time as producers located in the same general area but who are covered under other Federal orders.

Producer-settlement fund.

Marketwide pooling requires the use of an equalization (producer-settlement) fund which enables all handlers in the market to pay the minimum uniform price or prices to their producers.

Payments into the producer-settlement fund would be made each month by each handler whose total classified use value of milk exceeds the value of his milk at the uniform price or prices. Monthly payments out of the producer-settlement fund would be made to each handler whose use value is below the value of milk at the uniform price or prices for the market. This transfer of funds enables handlers with a use value below the average for the market to pay their producers the same uniform price or prices as handlers whose Class I utilization exceeds the market average.

As adopted herein, payments by handlers into the producer-settlement fund would be due by the 12th day of each month so that the market administrator could make payments out of the producer-settlement fund by the 13th day of each month.

Such timing will enable the market administrator to receive the money in the fund and make the payments out of the fund each month at the earliest feasible date. In the event that the balance in the producer-settlement fund on the 13th is insufficient to make the required payments out of the fund, the market administrator would reduce

uniformly such payments. However, the market administrator would complete such payments to handlers as soon as the necessary funds become available.

The payment schedule adopted herein following the announcement of the uniform price or prices has no slack. No one suggested, however, that a longer time be provided to accomplish these transactions. The primary concern of all interested parties in this regard at the hearing was that payments to producers not be delayed any longer than is absolutely necessary. The time schedule adopted herein recognizes the desires of interested parties in the market by providing minimal, but generally adequate transaction time between the filing of reports by handlers and the payment of individual producers to accomplish the necessary functions involved in marketwide pooling. It will require the cooperation of all handlers in the market to work properly. If problems in this regard develop, the issue could be explored at a future hearing.

Payments to producers and cooperative associations. Each handler under the order should pay each producer for milk received from such producer, and for which payment is not made to a cooperative, at not less than the applicable uniform price or prices. Provision also should be made for partial payments for milk received during the first half of the month.

Under the payment provisions adopted herein, a handler would be required to make a partial payment to producers who had not discontinued delivery of milk to such handler prior to the 25th day of the month for their producer milk deliveries during the first 15 day of the month. Such payment would be by the last day of the month and would be at not less than the Class III price for the preceding month or 90 percent of the preceding month's weighted average price, whichever is higher. Proper deductions authorized in writing by the producer could be deducted from the partial payment due such dairy farmer. If a producer discontinued shipping milk to a handler prior to the 25th day of any month or if a producer had no established base upon which to receive payments under the base-excess plan during March through July, the applicable rate for making partial payments would be the Class III price for the preceding month.

The order proposed by the proponent cooperative would provide that producers without bases be paid a partial payment for their producer milk deliveries during the first 15 days of the month at the same rate as producers who had established bases. This rate would be the higher of the Class III price for the preceding month or 90 percent of the weighted average price for the preceding month. Paying producers who have no base and thus have only excess milk deliveries at the higher of these two suggested rates during the adopted base paying months of March through July could result in overpayments to such dairy farmers because the uniform price for excess milk would essentially be the Class III price. A partial payment for a producer's excess milk deliveries at 90 percent of the weighted average price for the preceding month could exceed the value of the milk at the uniform price for excess milk. The hearing notice included a proposal by five handlers to limit the partial payment to producers without bases in these months to the Class III price in the preceding month. Such a limit is appropriate for the foregoing reason and is incorporated in the partial payment provisions of the Alabama-West Florida order.

A similar overpayment problem could occur under the partial payment provisions proposed by the order proponent if a producer discontinues delivering milk to a handler shortly after the 15th day of the month. The order proponent recognized this at the hearing and suggested that the higher of the Class III price for the preceding month or 90 percent of the preceding month's weighted average price be paid only to producers who have not discontinued shipping milk to such handler prior to the 25th day of the month. DI suggested that producers who had not discontinued delivering milk to the handler before the 20th day of the month should receive their partial payments on the basis of the higher rate. In its brief, AMP supported DI's suggested date of the 20th.

It is concluded that the higher partial payment rate should apply only to those producers who have not discontinued shipping to the handler prior to the 25th day of the month. Providing a cutoff date of the 25th, as originally suggested by AMP at the hearing, will provide greater assurances to handlers that they will not overpay producers for their milk deliveries during the first 15 days of the month.

As AMP proposed, handlers would be required to pay producers on or before the 15th day of the following month at the applicable uniform price or prices for milk received from such producers in the preceding month. Final settlement for all of the producer's milk in the preceding month at the uniform price or prices would recognize the partial payment and any other proper adjustments verifiable by the market administrator.

Producers whose milk is covered under the rules and regulations of the Alabama Dairy Commission have been receiving their payments from the handlers buying their milk on or about the 20th day of each month for their deliveries during the first half of the month, and the final settlement for their deliveries during the month on or about the 10th day of the following month. In this connection, four independent producers proposed that handlers be required to pay producers a partial payment on the 20th day of each month for the producer's milk deliveries during the first 15 days of the month and a final payment on the 10th day of the following month for the producer's milk deliveries in the preceding month. This was proposed so that they would not have to wait an additional 5 to 11 days to receive their partial and final payments for milk.

Final settlement by such an early date a Federal order providing for marketwide pooling would not be possible. Handlers need a reasonable amount of time each month to file their reports of receipts and utilization with the market administrator. Likewise, the market administrator must, in turn, have adequate time to process such reports and compute the uniform price or prices. Time is also required for handlers to equalize their payments through the producer-settlement fund. The dates for producer payments provided in the attached order are the earliest practicable. Moreover, they are appropriate considering the reporting, equalizing and price computations that must take place prior to the final settlement with producers. In addition, as already indicated, the producers under this proposed new Alabama-West Florida order would receive the partial and final payments for their milk deliveries on or about the same date as other producers located in the same general area but covered other Federal orders.

In the event a handler has not received from the market administrator the full producer-settlement fund payment by the date such handler is required to pay producers, the handler may reduce the payments to producers on a pro rata basis. Such reduction should not exceed the amount of the underpayment. The handler would be required to complete the producer payments on the next date for making such payments following the receipt of the balance due from the market administrator.

Provision also is made in the attached order for a cooperative association to receive payment from handlers for milk of producers who elect to market their milk through such association. Providing for a cooperative association to collect payments due individual producers who have authorized the cooperative to collect such payments on their behalf will permit the cooperative association to reblend the proceeds from the sale of such milk, as authorized by the Act. Also, it will facilitate the cooperative's movement of milk among pool plants and disposal of reserve milk supplies to other plants for manufacturing use.

As provided in the attached order, each handler upon request should pay cooperatives the full amount due for producers' milk in lieu of payments to individual producers. Both the partial and final payments to a cooperative association should be made at least 1 day prior to the date payments are due to individual producers. This will enable cooperative associations to pay the producers for whom they market milk on the same day other producers supplying the market are paid.

The proposed order would have permitted cooperatives to collect payments only for the producer milk of its members. However, since proponent suggested that a cooperative could be a handler on milk of producers who are not members of such cooperative in addition to the milk of members, the association should be permitted to collect payments with respect to the milk of nonmember producers who have authorized the cooperative to collect such payments Such a payment procedure is appropriate in that it complements the treatment afforded the milk of producers for which the cooperative may be the handler. Accordingly, the new order will permit cooperatives to collect the payments due individual producers (members and other producers) for their producer milk deliveries.

In connection with providing for a cooperative to collect lump-sum payments due the individual producers, the proposed order included a provision that would require a written promise by a cooperative to reimburse the handler for the amount of any actual loss incurred by such handler because of an improper claim by the association. The order proponent testified that this provision was proposed to prevent a handler from paying for a producer's milk twice. He pointed out that if a producer's contact with the cooperative was terminated without informing the handler buying milk from such dairy farmer, and the handler pays the cooperative, a double payment on the milk could result. Since the producer would not be a member of the cooperative, the handler also would be obligated under the order to pay the individual producer for such milk. Under the cooperative's proposal, the association would be required to reimburse the handler for the amount of money the cooperative collected for a producer who had terminated a membership contract with the association.

The proposal thus was presented as providing some basis towards resolution of disputes that concern whether or not a producer is a member of a cooperative. The market administrator may make a determination as to who is marketing a producer's milk. However, except to the extent that a contract raises questions concerning qualification under the Capper-Volstead Act, disputes involving producer contracts with a cooperative association are not a Federal order concern. There are other procedures available to the parties at interest in the market to resolve such disputes. Since the record does not provide any other evidence that such a provision is essential, the new order need not include such a provision.

The proposed order did not specify a payment obligation on milk delivered to a pool plant by a cooperative association acting as a bulk tank handler. To be sure that all aspects of payments for producer milk are covered, the order should specify that pool plant operators shall pay a cooperative bulk tank handler at the uniform price or prices for the milk received from producers who have authorized the cooperative to collect payments for their milk. If such milk is paid for by the pool plant operator at the uniform price or prices, accounting for the milk under the order will be simplified considerably. This method of payment will facilitate any adjustment required when audit by the market administrator discloses an error in classification.

Payments to and from the producer-settlement fund for milk delivered to a pool plant by a cooperative bulk tank handler will be made directly between the pool plant operator and the market administrator. This procedure will place the responsibility for accounting for such milk and for its payment directly on the pool plant operator who processes the milk. If settlement were made through the cooperative association, i.e., when a pool plant operator settles with the cooperative at class prices and the cooperative pays into or collects from the producer-settlement fund, an unnecessary third party is entered into the transaction. By eliminating the cooperative as an intermediary between the pool plant operator and the market administrator with respect to transactions involving the producer-settlement fund, problems of financial responsibility, enforcement and subsequent audit adjustments will be greatly reduced.

For the foregoing reasons, the attached order would require a pool plant operator to pay the cooperative at least one day prior to the last day of the month for milk delivered to such plant during the first 15 days of the month by a cooperative bulk tank handler. The same partial payment rate that handlers pay individual producers would be used by handlers to make partial payments to cooperatives.

By the 14th day of the following month, a pool plant operator would be required to make final settlement with the cooperative for the producer milk delivered to such plant in the preceding month by the cooperative as a bulk tank handler at not less than the appropriate uniform price or prices.

The attached proposed order provides that at the time final settlement is made for milk received from producers during the month, the handler is required to furnish each producer (or cooperative association) a supporting statement. This statement would indicate the month and identity of the producer, the daily and total pounds and average butterfat content of producer milk received from the producer, the minimum rate of payment required under the order, the rate used if it is other than the minimum rate, the amount and nature of any deductions, and the net amount of payment to such producer or cooperative.

Base and excess plan. A seasonal "base and excess" plan should be incorporated in the new order.

The purpose of a base-excess plan is to provide an incentive for producers to even out their milk production throughout the year, i.e., to encourage production in the months of seasonally low production and discourage excess production in the months of seasonally high production.

Associated Milk Producers proposed that a seasonal base-excess plan be used to distribute to producers the returns from the sale of their milk. In support of its base plan proposal, a witness testified that dairy farmers supplying the Alabama market are accustomed to base plans because they have been operating under some type of base or quota plan for at least 20 years. Producers in Alabama previously were

covered by a quota plan under the Alabama Dairy Commission, which was declared illegal by the U.S. Fifth Circuit Court of Appeals in New Orleans. After the quota regulations were struck down, the cooperative operated a similar plan for its members. The cooperative indicated that it was using a 12-month base plan, which was similar to the quota plan, to pay its members at the time of the hearing. The witness also stated that the cooperative was shifting to the seasonal base plan the association was proposing for adoption in the new Alabama-West Florida order on August 1, 1980. He further testified that in his opinion, the proposed market's favorable seasonal production pattern primarily was the result of the existence of some type of base allocation program that encouraged more milk to be produced when fluid sales were high and discouraged excess milk production during the high milk production season.

Dairymen, Inc. (DI), supported the adoption of the seasonal base-excess plan proposed by AMP and essentially for the same reason, i.e., to maintain the market's favorable seasonal production pattern. A witness for DI testified that the cooperative operates a similar seasonal base plan for the members in the Alabama District of its Nashville Division.

At least one proprietary handler in Alabama also was operating a seasonal base and excess plan for its independent producers at the time of the hearing. A producer who sells his milk to such handler testified that he is paid for his milk deliveries in certain months in accordance with the terms and conditions of that plan. He stated that the base plan encourages him to produce more milk in the fall months when milk supplies in Alabama generally are short relative to the market's Class I needs. In this opinion, the base plan provides producers an incentive to tailor their feeding and breeding programs to achieve more level milk production throughout the year by encouraging more milk to be produced in the fall and less in the spring, thereby maximizing their returns under the order.

Southern Milk Sales (SMS) opposed the adoption of a base plan for the Alabama-West Florida market. A witness for the cooperative stated that the blend price for this high Class I utilization market would provide adequate incentives for producers to adjust their production patterns to receive the greatest returns for the sale of their milk, i.e., new producers will enter the market in the fall and established producers will gear their herd management toward fall production when such prices are high.

A base-excess plan should be included for the proposed Alabama-West Florida market. The Alabama market has developed a good seasonal milk production pattern over the years. Nevertheless, milk production for the market does fluctuate seasonally with supplies generally increasing in the spring and declining in the fall. The base plan will provide a means of encouraging a level seasonal production pattern so that the good seasonal coordination between milk supplies and Class I sales will be maintained.

The record indicates that some producers in Alabama have attempted to gear their feeding and breeding programs toward more milk production in the fall months of September and October when Alabama experiences a period of extreme heat and humidity. Because of the heat stress conditions during this time of year, milk production is a little more difficult for dairy farmers in Alabama than in some other areas of the country. To maintain their production level in these months, dairy farmers must manage their herds to bring more cows into production at this time. According to testimony presented at the hearing, a cow that is freshened in the high stress period (September or October) will never produce as much milk, due to the high temperatures, as a cow that is freshened in the spring when cooler temperatures generally prevail. In addition, cows will graze less in the early fall months as pasture conditions deteriorate because of the hot weather than they do in the spring.

Hence, to achieve and maintain level production throughout the year, producers incur certain economic costs by managing their herds in this manner as opposed to what might be the more natural cycle of cows freshening and producing milk for the Alabama-West Florida market.

Milk production and Class I sales have been in fairly good balance in the proposed market, although it is noted that much of the market's supply originates on farms located outside the marketing area. Data gathered by the Alabama Dairy Commission were presented at the hearing to indicate the market's favorable production-sales relationship. they indicated some seasonal fluctuations in production and Class I sales. For example, on the basis of 4-year (1976–79) averages, the relationship between the daily average producer milk supply and the daily average Class I sales ranged from a low of 109 percent in November to a high during the flush milk production months of 117 percent in March.

These data indicate a very small seasonal variation in milk production and Class I sales. However, it should be noted that not all of the milk diverted off the market by Alabama licensed handlers has been priced and pooled under the regulations of the Alabama Dairy Commission, which tends to indicate a more favorable production-sales pattern than would be expected under the Federal order.

If there is a large seasonal variation in milk production and Class I sales, serious marketing problems could be created for producers and especially for cooperatives supplying the market. These problems are centered on obtaining adequate supplies of milk for handlers' fluid needs in the months when milk production is short relative to the market's fluid needs and disposing of excess supplies during the months when milk production is more than adequate to meet the market's Class I needs.

For example, if milk production declines too much in the months when the fluid demand is high (September-January), the cooperative likely would need to import additional milk from beyond the local supply area to meet the market's fluid needs. Encouraging producers to supply the market's fluid needs in the short supply season would reduce the cost associated with purchasing milk produced in distant locations and transporting it to the market to fulfill the Class I demand of plants and consumers in this market. Such movements could involve considerable distances and therefore would be more costly in the future if fuel prices continue to rise.

Conversely, if milk production increases to much in the months when the fluid demand is low, the disposition of milk that is excess to the market's fluid needs would become a burden for producers and cooperatives because there is limited manufacturing capacity in the local area. There are only two relatively small plants in Alabama (other than soft-product plants) that manufacture milk. Hence, if excess milk supplies are generated, such milk must be transported to manufacturing plants located considerable distance from the major consumption centers in Alabama. The costs of such transportation are borne primarily by cooperatives.

Thus, producers, handlers and consumers would benefit from a low variation in milk production by minimizing the costs of obtaining additional supplies in the short production months and through reduced

costs of marketing excess milk production associated with the fluid needs in the flush production months. In view of the foregoing, adoption of a base-excess plan for the new Alabama-West Florida market is appropriate for the purpose of maintaining reasonably level milk production throughout the year.

This issue concerns essentially just producers in that it deals with how the pooled value of milk would be divided among the producers supplying the Alabama-West Florida market. In such case, the views of producers are an important consideration. The record in this proceeding clearly shows that a majority of producers who will be supplying the new market prefer a base-excess plan as a means of distributing the returns for milk among producers.

The base-excess plan adopted in this decision is very similar to that proposed by the order proponent. Each producer would be assigned a base computed by dividing the producer's total pounds of producer milk in September through January (the base-forming period) by the number of days' production represented in such producer milk deliveries or by 120, whichever is more. A single delivery by a producer on every-other-day delivery would be considered two days' production in computing a base.

If a producer operates more than one dairy farm, a separate base should be computed for each such dairy farm. The proposed base-excess plan included in the hearing notice did not cover this point. However, the witness for the proponent of the order testified that in such cases, he preferred that a separate base be computed for each dairy farm of a producer. The order would provide a guideline to cover this type of situation.

As proposed by AMP, the months of September through January should be the base-forming period. It is during these months that milk production tends to be low relative to Class I needs. In order to establish a production level for which they will receive payment at the higher uniform price for base milk in the base-paying months, producers will tend to establish a higher level of production in the base-forming months. The uniform (weighted average) price would be the minimum order price payable to producers for producer milk delivered during the base-forming months of September through January. Such price would also be payable to producers in the months of August and February which would be neither base-forming nor base-paying months.

The base-paying months should be March through July, as proposed. These months form a period when milk production generally is high and Class I utilization of milk is low. Thus, it is a period when the base plan should discourage excessive production. This would occur because during the base-paying months, payments to producers would reflect a lower price for any excess producer milk delivered to the market. Thus, the operation of the base-excess plan should serve to maintain, or perhaps improve, the seasonal production pattern that producers desire.

"Base milk" would be the producer milk of a producer in each month of March through July that is not in excess of the producer's base multiplied by the number of days in the month. "Excess milk" would be the producer milk of a producer in each month of March through July in excess of the producer's base milk for the month. Excess milk would include all of a producer's milk deliveries during March through July if such dairy farmer has no base.

The market administrator each year would compute a new base for each producer and, by February 28, would notify each producer and the handler receiving the milk from such dairy farmer of the producer's base. The market administrator would also notify a cooperative, if requested, of the amount of base assigned to each producer-member.

In computing the uniform prices for base and excess milk, Class III producer milk would be assigned to excess milk first. If Class III producer milk in the market exceeds the pounds of excess milk deliveries by producers, the uniform price for excess milk will be the Class III price. In such case, the additional value for the remaining Class III producer milk as well as the values for Class I and Class II producer milk will be reflected in the uniform price for base milk.

As proposed by producers, the uniform price for excess milk should not be subject to a location adjustment. Since excess milk would represent basically producer milk classified in Class III (milk for manufacturing uses) to which no location adjustment is applicable, the uniform price for excess milk should not be subject to a location adjustment. There is essentially no difference in the location value of milk for Class III uses. The Class III price under the Alabama-West Florida order and other Federal milk orders is equal to the average price per hundredweight for the month of manufacturing grade milk f.o.b. plants in Minnesota and Wisconsin. If a location adjustment were applied to the uniform price for excess milk, it could result in applying an excess price to the producer milk at various plant locations that is less than the value of manufacturing grade milk delivered to those same plant locations.

A producer generally would deliver milk continuously throughout the base-forming period. However, because of various circumstances (e.g., storm damage at the farm or to roads, temporary suspension of a health permit or temporary loss of market when cut off by a buying handler), a producer may be off the market for a limited number of days during the base-forming period. In recognition of this, it was proposed that producer who delivered at least 120 days' production during the base-forming period would have average daily deliveries computed on the same basis as a producer who delivered continuously throughout the entire period (by dividing the total producer milk deliveries by such dairy farmer during the five-month period by the number of days' production represented in such deliveries).

The requirement that a producer supply the market in the base-forming months in order to earn a base provides an incentive to ship to the Alabama-West Florida market instead of to other markets in the months when production is low relative to the demand for Class I milk. A producer who ships at least 120 days' production during the five-month base-forming period can reasonably be considered as being fully associated with the market. A producer who delivered less than 120 days' production should have a base determined by dividing total production in the base forming period by 120. Thus, a producer who may have been supplying the Class I needs of another market for a substantial part of the base-forming period would receive a base that reflects the producer's contribution toward supplying the fluid needs of the Alabama-West Florida market in such period.

The hearing notice included a proposal by four independent dairy farmers requiring that a producer ship milk at least 60 days during the base-forming period to establish a base. At the hearing, a spokesman for the four farmers stated that they had decided to withdraw the proposal from consideration. There was no other testimony on the proposal.

The application of the base-excess plan adopted herein to new producers is essentially that proposed by AMP. One type of new producer coming onto the market in the base-paying period could be dairy farmers who had supplied the fluid milk needs of another order market or an unregulated market in the base-forming period. Milk produced on their farms in the base-paying months that

becomes associated with the Alabama-West Florida market would represent production that is surplus to the Class I needs of the market with which they had been previously associated. It is appropriate, therefore, as provided herein, that in the base-paying months producers should receive only the excess milk price for deliveries of such milk under the Alabama-West Florida order.

In other instances, persons who have not previously supplied a Class I market may become new producers on the new Alabama-West Florida market. Included in this category would be dairy farmers who had previously been shipping manufacturing grade milk and persons starting new dairy farm operations. Before coming onto the market as a new producer, such a person would be expected to have anticipated in advance whether to begin shipping during the base-paying months of March through July or in any of the other seven months of the year. If the choice is to begin delivering as a new producer in one of the five base-paying months, presumably that decision would be made in recognition of the fact that the uniform price for excess milk would be received for milk delivered to the market in those months by producers without bases.

In some instances a "natural disaster" may cause a producer to suffer a significantly reduced rate of production or force such person to discontinue temporarily the production of milk. Unless provision is made in the order to give consideration to such occurrences in computing a producer's base, the producer would suffer an undue hardship. Thus, the order should specify certain conditions under which relief may be granted to a producer whose production was adversely affected in the base-forming period as a result of an occurrence beyond the control of such dairy farmer.

This can be achieved by providing that the base assigned to a person who was a producer within the preceding base-forming period may be increased to the producer's average daily producer milk deliveries in the month immediately preceding the month during which production was adversely affected by an allowable "hardship" condition. Such relief would be granted only after the producer submitted to the market administrator by March 1 a written statement that established to the satisfaction of the market administrator that the amount of milk produced on such dairy farmer's farm in the immediately preceding base-forming period was substantially reduced because of a condition beyond the producer's control, which resulted from:

(1) Loss by fire or windstorm of a farm building used in the production of milk on the producer's farm;

(2) Brucellosis, bovine tuberculosis or other infectious diseases in the producer's milking herd, as certified by a licensed veterinarian; or

(3) A quarantine by a Federal or State authority that prevents the dairy farmer from supplying milk from the farm of such producer to a plant.

The conditions under which hardhip relief (in the form of an increased base) may be granted a producer encompass most natural disasters that could result in reduced production or in the temporary discontinuance of production on the producer's dairy farm. Such a standard will provide the market administrator the guidance necessary for applying the provision in an objective manner.

The base-plan provisions proposed by AMP would provide such hardship relief by assigning to the producer a base equal to 90 percent of the producer's average daily producer milk deliveries in the month immediately preceding the month during which the hardship occurred. The record is unclear as to the exact purpose of using the month specified and reducing the deliveries by 10 percent. Presumably the proposal attempts to provide a reasonable basis for establishing a base when a disaster has adversely affected a producer's output during the base-forming period.

However, an analysis of daily average milk deliveries by dairy farmer members of AMP during the base-forming months in 1978–79 reveals that daily average deliveries increased an average of 2.8 percent from month to month during August through December. Thus, computing such a base by allowing only 90 percent of a producer's deliveries during the preceding month most likely would provide a base smaller than the producer would have had absent the hardship condition. Based on conditions in this market, the daily average deliveries for the month preceding a disaster is appropriate for computing a base under hardship conditions.

If a dairy farmer's milk was delivered to a nonpool plant that became a pool plant after the beginning of the base-forming period, a base should be assigned to such person in the same manner as if the dairy farmer had been a producer during such entire base-forming period. Such base would be calculated from all of the dairy farmer's deliveries that would have been producer milk if the nonpool plant had been a pool plant during such September through January period.

The order provisions covering the situation described in the preceding paragraph are modified somewhat from what was proposed by the order proponent. The provisions adopted herein clearly specify which base-forming period would be used if a nonpool plant became a pool plant after the beginning of the base-forming period. They also specifically identify which producer deliveries would count toward establishing a base for such dairy farmer.

To acquire pool status under the order a plant must dispose of a certain percentage of its receipts on routes in the marketing area or to other pool plants. Hence, when a nonpool plant becomes a pool plant it will most likely add Class I sales to the pool relative to such sales in prior periods when it was a nonpool plant. It is appropriate, therefore, that those dairy farmers who had been supplying the plant have bases computed for them according to their deliveries to the plant in the base-forming period.

Bases so assigned to such producers should not be transferable. Such producers would be receiving bases without having incurred any of the economic costs that the market's regular producers incurred in adjusting their operations to achieve more level production. Thus, any income received from the transfer of such bases in essence would be windfall gains, which should not be permitted.

The base earned by an individual producer who supplied the market in the preceding base-forming period should be transferable. This will facilitate the transfer of property when a baseholder dies or when the farm of a baseholder is sold. It will also facilitate adjustment by those producers desiring to expand or contract their operations. However, proper safeguards should be provided so that the transfer provisions may not be exploited at the expense of producers regularly supplying the market.

The amount of a base transferred could be in its entirety or in amounts of not less than 300 pounds. These limits, which were proposed at the hearing, are administratively practicable and should be adequate under conditions in the Alabama-West Florida market.

The proposed order provisions did not specify that base may be transferred only to another dairy farmer. However, under the base plan provisions adopted herein, only a producer may establish base, and only producer milk could be base milk. Since a base is useful only to producers, only producers should be permitted to hold base. There was no testimony presented at the hearing to

indicate an intent that other persons should be permitted to hold base. Accordingly, the order provides in this regard that base may be transferred only to a person who is or will be a producer by the end of the month that the transfer is to be effective.

Base transfers would be effective on the first day of the month following the date on which an application for transfer is received by the market administrator. However, since producers may not know their bases until February 28, they should be permitted to transfer base effective March 1 if the transfer application is received by the market administrator on or before March 15 as the order proponent suggested. Such application would be requred to be on a form approved by the market administrator and signed by a baseholder or the legal representative of the baseholder's estate and the person to whom the base is to be transferred. If a base is held jointly, it would be required that the application be signed by all joint holders or the legal representative of the estate of any deceased baseholder. These provisions would insure that there will be no misunderstanding between the parties involved concerning transfers.

The base established by a partnership may be divided between partners on any basis agreed on in writing by them if written notification of the agreed upon division, signed by each partner, is received by the market administrator prior to the first day of the month in which the division is to be effective. This will facilitate the division of the assets of a partnership that is dissolved during the base-paying period. On the other hand, it will in no way affect the total quantity of base milk in the pool, irrespective of the manner in which the division of the base is made between the partners.

Likewise, two or more individual producers who establish bases separately and decide to form a partnership should be permitted to combine their bases. Although the proposed order would not have provided this, the new order is drafted to accommodate this situation. The combination of individual bases by producers forming a partnership would not affect the quantity of base milk in the pool.

A producer who on or after March 1 transferred all or part of the base held would not be permitted to receive other base by transfer that would be applicable within the March–July period of the same year. Also, a producer who received base by transfer on or after March 1 would not be permitted to transfer a portion of the base assigned to such dairy farmer to be applicable within the March–July period of the same year, but would be permitted to transfer the entire base. Adoption of these provisions will tend to insure that the exchange of bases between producers are bona fide transfers. Absent such provisions, the transferring of bases back and forth by two or more producers throughout the base-paying period could result in unwarrantedly increasing their share of the total payments under the order for producer milk at the expense of all of the other producers.

The first base-forming period under the proposed order is expected to be September 1982 through January 1983. Complete data would be available at the end of that period to compute bases. It would be appropriate, therefore, to delay application of the base and excess payment provisions of the order until March 1, 1983.

(e) *Administrative provisions.—Charges on overdue accounts.*

The order should provide a charge on all handler obligations to the market administrator that are overdue. Such charge should be 1.5 percent per month and should apply on the first day that a payment is overdue and on the same day of each succeeding month until the obligation is paid. Payments subject to the charge would be those due the market administrator for the producer-settlement fund, order administration, marketing services, and audit adjustments.

Proponent proposed that unpaid handler obligations to the market administrator be increased 1.5 percent for each month or portion of a month that such obligation is overdue. The AMP spokesman stated that the intent of the proposal was to encourage prompt payment of handler obligations to the market administrator. The proponent's witness also testified that 18 percent was about the going annual rate for short-term (business) loans at the time of the hearing.

It is essential to the effective operation of the order that handlers make their payments to the market administrator on time. Under the marketwide pooling arrangement, it is necessary that handlers with Class I utilization higher than the market average pay part of their total use value of milk to the producer-settlement fund. Through this means, money is made available to handlers with lower than average Class I utilization so that all handlers in the market, irrespective of the way they use the milk, can pay their producers the uniform price. The success of this arrangement depends on the solvency of the producer-settlement fund.

Also, the prompt payment of amounts due the administrative and marketing service funds is essential to the performance by the market administrator of the various administrative functions prescribed by the order. Delinquent payments to these funds could impair the ability of the market administrator to carry out his duties in a timely and efficient manner.

Payment delinquency also results in an inequity among handlers. Handlers who pay late are, in effect, borrowing money from producers. In the absence of any late-payment charge that approximates the costs of borrowing money from commercial sources, handlers who are delinquent in their payments have a financial advantage relative to those handlers making timely payments.

It should be noted that late-payment charges are not a substitute for prompt payments by handlers. Those delinquent in their obligations would still be subject to legal enforcement action as authorized under the Act.

Under the provisions adopted herein, overdue handler obligations that are payable to the market administrator would be increased by 1.5 percent on the day after the due date. Any remaining unpaid portion of the original obligation would be further increased by 1.5 percent on the same date of each succeeding month until the obligation is paid. The late payment charge would apply not only to the original obligation but also to any unpaid charges previously assessed. Also, the charge should apply whether the obligation is paid 1 day late or 10 days late, and should be applicable to both fully regulated and partially regulated handlers alike.

The order need not provide that the dates when payments to the market administrator are due be moved back whenever such a due date falls on a Saturday, a Sunday, or a national holiday. A group of handlers proposed that when a payment to the market administrator is due on a Saturday, a Sunday, or a national holiday, such due date be shifted to the next day that the market administrator's office is open for business, and payments received after the due date would be considered as having been made on time if postmarked not later than the second day prior to the due date. In support of the proposal, a handler spokesman testified that the purpose of the proposal was to assure that payments made in good faith by a handler and postmarked at least two days prior to the due date would not

result in assessment of a late-payment charge.

The handlers' intent can be accomplished without adding a specific provision by making it clear that the payment due dates in the order shall be considered as having been met if the envelope bearing the payment is postmarked not later than the due date. Obviously, monies hand delivered to the market administrator by the due date would not be subject to a late payment charge. Recognizing the U.S. Postal Service postmark for payment compliance purposes should serve to alleviate the concerns addressed in the proposal. If other related problems develop, the issue could be considered at a future hearing based on actual operating experiences.

Marketing services. The new order should provide for furnishing marketing services to producers, such as verifying the tests and weights of producer milk and furnishing market information. These services should be provided by the market administrator, and the cost should be borne by producers for whom the services are rendered. However, any cooperative association, if approved for such activity by the Secretary, may perform such services for its producers in lieu of having the market administrator perform the services.

AMP proposed that a marketing services provision by included in the new order and that it be funded by an assessment of 7 cents per hundredweight of production to be paid by the producers for whom the market administrator performs the prescribed services. The cooperative's spokesman testified that the 7-cent rate should provide adequate funds for the market administrator to provide marketing services to nonmembers, based on an analysis of the expense of such programs in other markets. Also, he noted that the rate provided in an order is a maximum rate that can be reduced by the Secretary if experience shows that the services can be provided for a lesser amount. He stated that a marketing services provision is needed because producers who are not members of a cooperative do not have such a program provided and that such producers would benefit from such services.

Several producers who were not members of a cooperative testified in opposition to including a marketing services plan in any order adopted for the proposed marketing area. Two key points were raised in such testimony. Most felt that the 7-cent rate was excessive and would reduce their returns unnecessarily. Also, most such producers expressed the view that a marketing services program was not warranted because, to their knowledge, they had experienced few, if any, probems of inaccurate weights and tests.

One producer, however, stated that the marketing services assessment rate appeared to be quite reasonable. Also, he expressed the view that the benefits of verified weights and tests could easily exceed the cost. He did, however, state that he would prefer to have an option of whether or not to participate in the marketing services program.

Another producer, speaking for more than 50 other producers, suggested a marketing services option on a plant by plant basis. He suggested that producers shipping to a plant would have to approve participation in a marketing services program before the market administrator would verify milk weights and butterfat tests of their milk deliveries to that plant. Still another producer testified that nonmembers should be allowed to do their own verifying of weights and tests. He indicated that he planned to build his own lab for such purpose.

The record clearly discloses that within the proposed marketing area, there is no governmental or regulatory agency that regularly checks the weights and butterfat tests of dairy farmers' milk to verify that they are paid for the milk on the basis of accurate farm weights and butterfat tess. State agencies in both Alabama and Florida regularly test milk from dairy farms for butterfat content. However, such tests are not used to resolve disputes between dairy farmers and plants, or for the purpose of establishing that dairy farmers are paid for the actual quanties of milk and butterfat delivered to plants.

Accordingly, the Alabama-West Florida order should provide such services for such producers. A maximum rate of 7 cents per hundredweight appears to be a reasonable amount to assess producers to cover the expenses of conducting the program. If the marketing services program can be operated satisfactorily for less money, the Secretary may reduce the effective rate without holding a hearing.

However, the suggestion that marketing services be provided on an optional basis cannot be adopted. The Act specifies that if a marketing service provision is included in an order, it must apply to all producers under the order. Likewise, while a laboratory operated by a producer could provide the producer with a check on butterfat tests, this in not what the Act contemplates as "verification of weights, sampling, and testing of milk purchased from producers." Tests performed in a producer's own laboratory could not be recognized as adequately fulfilling the marketing services requirement. Marketing services for producers who are not members of a cooperative that provides such services must be performed by the market administrator or under the market administrator's direction.

There is a need for a marketing service program in connection with the administration of a Federal milk order for the Alabama-West Florida area. The weighing and testing of the milk of all producers is closely related to the main provisions of the order, which are the classification and pricing provisions. The latter provisions are the basis of the computation of the minimum uniform price payable to producers.

The order requires all regulated handlers to submit to the market administrator each month a report showing the total quantity of skim milk and butterfat received from producers and the utilization of such skim milk and butterfat in the three price classifications provided. To verify that a handler has reported all receipts and disposition correctly and to insure that producers receive proper payment for their deliveries, the market administrator audits each handler's operation. The quantity of skim milk and butterfat received by a handler must balance, of course, with the quantities of skim milk and butterfat in tne products processed and disposed of by the handler. This requires the availability of the weight and butterfat test of each producer's deliveries.

Milk produced on a handler's own farm should be exempt from marketing service deductions, even though it is subject to other provisions of the order. There are no payments to other persons on such milk. Hence, there is no need to provide the same marketing services as are provided other producers.

The other service provided, that of furnishing market information, is designed to keep the producer informed of developments that might affect such producer's price or market outlet in order that the producer may better evaluate marketing conditions. The objective of the program is to aid producers to achieve and maintain orderly marketing conditions for their milk.

In the case of producers who market their milk through a cooperative association, the Act authorizes such cooperative to perform these marketing services, and the costs of these services normally are borne by such producers through membership dues.

Expense of administration. Each handler should be required to pay to the market administrator a proportionate share of the cost of administering the order. For this purpose, a charge of 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, on producer milk (including milk of such handler's milk so assessed under another Federal order) is provided.

The market administrator must have sufficient funds to administer properly the terms of the order. The Act provides that the cost of administration shall be financed through an assessment on handlers. A principal function of the market administrator is to verify the receipts and dispositions of milk from all sources. Equity in sharing the cost of administration of the order among handlers will be achieved, therefore, by applying the administrative assessment on the basis of milk received from dairy farmers (including milk diverted to nonpool plants) and on other source milk allocated to Class I milk.

The proposed order provides that a cooperative shall be the handler on milk it delivers in tank trucks from producers' farms to pool plants of other handlers. The cooperative is the handler on such milk basically for the purpose of making payments to its individual members. For pricing purposes, however, the handlers that receive such milk at their plants would treat it the same as any other direct receipts from producers.

The market administrator must verify by audit the receipts and utilization at each pool plant whether the plant operator buys milk directly from producers or through a cooperative as a bulk tank handler. Thus, the pool plant operator receiving such milk should pay the administrative assessment on it on the same basis as for producer milk received at the plant. The cooperative bulk tank handler would be liable only for the administrative assessment on the quantity of milk picked up at producers' farms that is not received at the pool plant.

The order specifies minimum performance standards that must be met to obtain regulated status. The operator of a plant not meeting such standards (i.e., a partially regulated distributing plant) is required to either (1) make specified payments (discussed elsewhere in this decision) into the producer-settlement fund on route dispositions in the marketing area in excess of offsetting purchases of Federal order Class I milk, or (2) other wise pay into such fund and/or to dairy farmers an amount not less than the classified use value of all receipts from dairy farmers computed as though such plant were a fully regulated plant.

In administering the order as it applies to partially regulated distributing plants, the market administrator incurs expenses in essentially the same manner as in applying the order to pool handlers, even though the order is not applicable to the partially regulated handler to the same extent as to fully regulated handlers. Hence, payment of the administrative assessment on the partially regulated handler's in-area sales only would reasonably constitute such handler's pro rata share of the administrative expense.

In the case of unregulated milk that enters the market through a regulated plant for Class I use, it is the regulated handler who utilizes the unregulated milk and who must report to the market administrator the receipt and use of such milk. Also, the receipts and utilization of all milk at the regulated handler's plant are subject to verification by the market administrator. Hence, the regulated handler should be responsible for payment of the administrative assessment on such unregulated milk.

The order is designed so that the cost of administration is shared equitably among handlers distributing milk in the proposed marketing area. However, to avoid duplication, an assessment should not be made on other source milk on which an assessment was made under another Federal order.

Provision should be made so that the Secretary may reduce the amount of the administrative assessment without the necessity of amending the order. The rate can thus be reduced when experience indicates a lower rate will be sufficient to provide adequate funds for the administration of the order.

General provisions. The Alabama-West Florida order adopted herein incorporates, by reference, certain terms, definitions, and administrative provisions that are included in Part 1000 of the Code of Federal Regulations. These provisions are common to all Federal milk orders, having been so adopted effective July 1, 1971 (36 FR 9844).

Under Part 1000, a market administrator was required to deliver a bond to the Secretary covering himself or herself and each employee designated to act in his or her stead. Pub. L. 92–310 exempted Federal employees from such bonding requirements. Hence, Part 1000 was changed so that all Federal milk orders would conform with Pub. L. 92–310. To accomplish this, on February 5, 1980 (45 FR 7777), the bonding requirements in Part 1000 were terminated.

Since Part 1000 is applicable to all Federal milk orders and was proposed for adoption under this new program, it was printed in the hearing notice for informational purposes of interested parties. As it appeared in the notice of hearing, it did not reflect the bonding change. Proponent witness testified that the cooperative intended to propose the identical general provisions for this order which are applicable to all other orders. Accordingly, the general provisions adopted in July 1971, and as changed in February 1980, should be, and hereby are incorporated by reference in this order.

The first section (§ 1000.1) states that the uniform provisions included in Part 1000 shall be a part of each Federal milk marketing order as if set forth in full in each order, except in any order where any such provision is expressly defined or modified otherwise.

The second section (§ 1000.2) includes definitions of five general terms used in all Federal milk orders: Act, Order, Department, Secretary, and Person.

The third section (§ 1000.3) deals with the designation, powers, and duties of the market administrator.

The fourth section (§ 1000.4) pertains to the continuity and separability of provisions in an individual order. For the most part, these are internal administrative rules and instructions to Department employees regarding procedures involved in the suspension, termination, or liquidation of any or all provisions of a Federal milk order.

The fifth section (§ 1000.5) describes a handler's responsibility with respect to records and facilities.

The final section (§ 1000.6) relates to the termination of obligations.

The general provisions of Part 1000 have the same intent and purpose in each Federal milk order. They have worked effectively. Adopting Part 1000 by reference for the Alabama-West Florida order will promote uniform application of these provisions, which have the same intent and purpose in all orders.

A detailed discussion of the need and basis for incorporating the general provisions in each order is contained in a decision issued by the Assistant Secretary on April 15, 1971 (36 FR 7514). Official notice was taken of this decision at the hearing held June 23–July 2, 1980, for this market. The record evidence indicates that the findings and conclusions of the 1971 decision and the statement of consideration in the 1980 termination order are equally applicable under current marketing conditions in the proposed Alabama-West Florida marketing area.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

(a) The tentative marketing agreement and the order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(c) The proposed marketing agreement and the order will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held;

(d) All milk and milk products handled by handlers as defined in the tentative marketing agreement and the order are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(e) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, five cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1093.85 of the aforesaid tentative marketing agreement and the order.

Recommended Marketing Agreement and Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the proposed order. The following order regulating the handling of milk in the Alabama-West Florida marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

PART 1093—MILK IN THE ALABAMA-WEST FLORIDA MARKETING AREA

Subpart—Order Regulating Handling

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1093.1 General provisions.

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1093.77 Adjustment of accounts.
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Administrative Assessment and Marketing Service Deduction

1093.85 Assessment for order administration.
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Base-Excess Plan

1093.90 Base milk.
1093.91 Excess milk.
1093.92 Computation of daily average base for each producer.
1093.93 Base rules.
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Authority: Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et. Seq.)

Subpart—Order Regulating Handling

General Provisions

§ 1093.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

Definitions

§ 1093.2 Alabama-West Florida marketing area.

The "Alabama-West Florida marketing area", hereinafter called the "marketing area", means all territory within the boundaries of the State of Alabama and the Florida counties of Escambia, Santa Rosa, Okaloosa and Walton, including all piers, docks, and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed counties:

Zone 1

Alabama Counties

Cherokee, Colbert, De Kalb, Franklin, Jackson, Lauderdale, Lawrence, Limestone, Madison, Marshall and Morgan.

Zone 2

Alabama Counties

Bibb, Blount, Calhoun, Chambers, Chilton, Clay, Cleburne, Coosa, Cullman, Etowah, Fayette, Jefferson, Lamar, Marion, Pickens, Randolph, St. Clair, Shelby, Talladega,

Tallapoosa, Tuscaloosa, Walker and Winston.

Zone 3

Alabama Counties

Autauga, Barbour, Bullock, Butler, Choctaw, Clarke, Conecuh, Crenshaw, Dallas, Elmore, Greene, Hale, Lee, Lowndes, Macon, Marengo, Monroe, Montgomery, Perry, Pike, Russell, Sumter, Washington and Wilcox.

Zone 4

Alabama Counties

Baldwin, Coffee, Covington, Dale, Escambia, Geneva, Henry, and Mobile.

Florida Counties

Escambia, Okaloosa, Santa Rosa and Walton.

Zone 4a

Alabama County

Houston.

§ 1093.3 Route disposition.

"Route disposition" means a delivery to a retail or wholesale outlet (except to a plant) either direct or through any distribution facility (including disposition from a plant store, vendor or vending machine) of a fluid milk product classified as Class I milk.

§ 1093.4 Plant.

"Plant" means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products, including filled milk, are received, processed, or packaged. Separate facilities without stationary storage tanks that are used only as a reload point for transferring bulk milk from one tank truck to another or separate facilities used only as a distribution point for storing packaged fluid milk products in transit for route disposition shall not be a plant under this definition.

§ 1093.5 Distributing plant.

"Distributing plant" means a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk and at which fluid milk products are processed or packaged and from which there is route disposition in the marketing area during the month.

§ 1093.6 Supply plant.

"Supply plant" means a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk and from which fluid milk products are transferred during the month to a pool distributing plant.

§ 1093.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant from which during the month there is:

(1) Total route disposition, except filled milk, equal to 50 percent or more of the total quantity of Grade A fluid milk products, except filled milk, physically received at such plant or diverted therefrom pursuant to § 1093.13; and

(2) Route disposition, except filled milk, in the marketing area is at least the lesser of a daily average of 1500 pounds or 10 percent of the total quantity of Grade A fluid milk products, except filled milk, physically received at such plant or diverted therefrom pursuant to § 1093.13.

(b) A supply plant from which fluid milk products are transferred to pool distributing plants. Such transfers must equal not less than 70 percent in each of the months of September through January, and 50 percent in each of the months of February through August, of the total quantity of Grade A milk that is received during the month from dairy farmers (including producer milk diverted from the plant pursuant to § 1093.13 but excluding milk diverted to such plant) and handlers described § 1093.9(c).

(c) A plant operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and during the month 70 percent or more of the producer milk of members of such cooperative association is delivered directly from their farms to pool distributing plants or is transferred to such plants as a fluid milk product from the cooperative's plant, subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a) or (b) of this section or under the provisions of another Federal order applicable to a distributing plant or a supply plant; and

(2) The plant is approved by a duly constituted regulatory agency to handle Grade A milk.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A governmental agency plant;

(3) A plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its route disposition, except filled milk, is made in such other marketing area;

(4) A plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of route disposition in such other marketing area and from which there is a greater quantity of route disposition, except filled milk, in this marketing area than in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order; and

(5) A plant qualified pursuant to paragraph (b) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part, or such plant has automatic pooling status under such other order.

§ 1093.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a distributing plant that does not qualify as a pool plant and is not an other order plant, a producer-handler plant or a governmental agency plant.

(d) "Unregulated supply plant" means a supply plant that does not qualify as a pool supply plant and is not an other order plant, a producer-handler plant, or a governmental agency plant.

(e) "Governmental agency plant" means a plant operated by a governmental agency from which fluid milk products are distributed in the marketing area. Such plant shall be exempt from all provisions of this part.

§ 1093.9 Handler.

"Handler" means:

(a) Any person who operates one or more pool plants;

(b) Any cooperative association with respect to producer milk which it causes to be diverted pursuant to § 1093.13 for the account of such cooperative association;

(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer for delivery to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative association, unless both the cooperative association and the operator of the pool plant notify the market administrator prior to the time that such milk is delivered to the pool plant that the plant operator will be the handler of such milk and will purchase such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples. Milk for which the cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by the cooperative association at the location of the pool plant to which such milk is delivered;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler;

(f) Any person who operates an other plant described in § 1093.7(d); and

(g) Any person who operates an unregulated supply plant.

§ 1093.10 Producer handler.

"Producer-handler" means any person:

(a) Who operates a dairy farm and a processing plant from which there is route disposition in the marketing area;

(b) Who receives no fluid milk products from sources other than own farm production, pool plants, and other order plants;

(c) Who disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products received from own farm production, pool plants, and other order plants; and

(d) Who provides proof satisfactory to the market administrator that the care and management of the dairy farm and other resources necessary for such person's own farm production of milk and the management and operation of the processing plant are the personal enterprise and risk of such person.

§ 1093.11 [Reserved]

§ 1093.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk is:

(1) Received at a pool plant directly from such producer;

(2) Received by a handler described in § 1093.9(c); or

(3) Diverted from a pool plant in accordance with § 1093.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) A governmental agency plant exempt pursuant to § 1093.8(e);

(3) Any person with respect to milk produced by such person which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II of Class III utilization pursuant to § 1093.44(a)(8)(iii) and the corresponding step of § 1093.44(b); and

(4) Any person with respect to milk produced by such person which is reported as diverted to an other plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1093.13 Producer milk.

"Producer milk" means the skim milk and butterfat contained in milk of a producer that is:

(a) Received at a pool plant directly from such producer by the operator of the plant;

(b) Received by a handler described in § 1093.9(c); or

(c) Diverted by the operator of a pool plant or a cooperative association from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) In any month of February through August, not less than four days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(2) In any month of September through January, not less than ten days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(3) The total quantity of milk so diverted during any month by a cooperative association shall not exceed 30 percent of the producer milk that the cooperative association caused to be delivered to, and is physically received at, pool plants during the month;

(4) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (c)(3) of this section. The total quantity of milk so diverted during any month shall not exceed 30 percent of the producer milk physically received at such plant during the month;

(5) Any milk diverted in excess of the limits prescribed in paragraphs (c) (3) and (4) of this section shall not be producer milk. The diverting handler shall designate the dairy farmer deliveries that will not be producer milk pursuant to paragraph (c) (3) or (4) of this section. If the handler fails to make such designation, no milk diverted by such handler shall be producer milk;

(6) To the extent that it would result in nonpool status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be producer milk;

(7) The cooperative association shall designate the dairy farm deliveries that are not producer milk pursuant to paragraph (c)(6) of this section. If the cooperative association fails to make such designation, no milk diverted by it to a nonpool plant shall be producer milk.

(8) Diverted milk shall be priced at the location of the nonpool plant to which diverted.

§ 1093.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1093.40(b)(1) from any source other than producers, handlers described in § 1093.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1093.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1093.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1093.40(b)(1)) for which the handler fails to establish a disposition.

§ 1093.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or

sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1093.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1093.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1093.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and be engaged in making collective sales of or marketing milk or milk products for its members.

Handler Reports

§ 1093.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of its pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1093.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1093.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1093.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each holder not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1093.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1093.9(a), (b), and (c) shall report to the market administrator its producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) Such producer's name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1093.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1093.32 Other reports.

(a) Each handler described in § 1093.9 (a), (b) and (c) shall report to the market administrator on or before the 7th day after the end of each month of March through July the aggregate quantity of base milk received from producers during the month, and on or before the 20th day after the end of each month of March through July the pounds of base milk received from each producer during the month.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1093.30 and 1093.31, each handler shall report such other information as the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1093.40 Classes of utilization.

Except as provided in § 1093.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1093.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is not disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition.

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1093.15; and

(6) In shrinkage assigned pursuant to § 1093.41(a) to the receipts specified in § 1093.41(a)(2) and in shrinkage specified in § 1093.41 (b) and (c).

§ 1093.41 Shrinkage.

For the purpose of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1093.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat;

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1093.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1093.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1093.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1093.44(a)(12) and the corresponding step of § 1093.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1093.44(a)(7) or the corresponding step of § 1093.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1093.44(a) (11) or (12) or the corresponding steps of § 1093.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or transferred in the form of a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same

category as described in paragraph (b)(1), (2), or (3) of this section.

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfer or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I subject to adjustment when such information is available.

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to the class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1093.40.

(c) *Transfers to producer-handlers and transfers and diversions to governmental agency plants.* Skim milk or butterfat in the following forms that is transferred from a pool plant to a producer-handler under this or any other Federal order or transferred or diverted from a pool plant to a governmental agency plant shall be classified:

(1) As Class I milk, if so moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk of butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant, or a governmental agency plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or transferred in the form of a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d)(2)(ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in such handler's report of receipts and utilization filed pursuant to § 1093.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extend possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market admininstator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determined constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

(e) *Transfer by a handler described in § 1093.9(c) pool plants.* Skim milk and butterfat transferred in the form of bulk milk by a handler described in § 1093.9(c) to another handler's pool plant shall be classified pursuant to § 1093.44 pro rata with producer milk received at the transferee-handler's plant.

§ 1093.43 General classification rules.

In determining the classification of producer milk pursuant to § 1093.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1093.30 and shall compute separately for each pool plant, and for each cooperative association with respect to milk for which it is the handler pursuant to § 1093.9 (b) or (c) that was not received at a pool plant, the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1093.40, 1093.41, and 1093.42. The combined pounds of skim milk and butterfat so determined in each class for a handler described in § 1093.9 (b) or (c) shall be such handler's classification of producer milk;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1093.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1093.44 Classification of producer milk.

For each month the market administrator shall determine for each handler described in § 1093.9(a) for each pool plant of the handler separately the classification of producer milk and milk received from a handler described in § 1093.9(c), by allocating the handler's receipts of skim milk and butterfat to the utilization of such receipts by such handler as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1093.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1093.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1093.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1093.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1093.40(b)(1) that were not subtracted pursuant to paragraph (a) (4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from a governmental agency plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in such class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1093.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk

products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk is receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1093.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8) (i) and (ii) of this section and that were not offset by transfers or dversions of fluid milk products to the same unregulated supply plant from whcih fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraph (a)(12) (ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1093.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1093.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk and milk received from a handler described in § 1093.9(c), subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk and milk received from a handler described in § 1093.9(c) in each class shall be the

combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1093.45 Market Administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1093.44(a)(12) and the corresponding step of § 1093.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from another order plant, the class to which such receipts are allocated pursuant to § 1093.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to another order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests, the percentage of producer milk delivered by members of such association that was used in each class by each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

Class Prices

§ 1093.50 Class prices.

Subject to the provisions of § 1093.52, the class prices for the month per hundredweight of milk shall be as follows:

(a) *Class I price.* For the first 18 months this order is fully effective, the Class I price shall be the basic formula price for the second preceding month plus $2.30.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1093.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1093.52 Plant location adjustments for handlers.

(a) For milk received at a plant from producers or a handler described in § 1093.9(c) and which is classified as Class I milk without movement in bulk form to a pool distributing plant at which a higher Class I price applies, the price specified in § 1093.50(a) shall be adjusted by the amount stated in paragraph (a) (1) through (6) of this section for the location of such plant:

(1) For a plant located within one of the zones set forth in § 1093.2, the adjustment shall be as follows:

	Adjustment per hundredweight
Zone 1	Minus 20 cents.
Zone 2	No adjustment.
Zone 3	Plus 15 cents.
Zone 4	Plus 37 cents.
Zone 4a	Plus 20 cents.

(2) For a plant located in any of the Tennessee and Georgia counties listed below, the adjustment shall be minus 20 cents;

Tennessee Counties

Anderson, Bledsoe, Blount, Bradley, Campbell, Carter, Claiborne, Cocke, Cumberland, Grainger, Greene, Hamblen, Hamilton, Hancock, Hawkins, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Morgan, Polk, Rhea, Roane, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union and Washington.

Georgia Counties

Catoosa, Chattooga, Dade, Fannin, Murray, Walker, and Whitfield.

(3) For a plant located in any of the Tennessee and Kentucky counties listed below or in the Fort Campbell military reservation, the adjustment shall be minus 45 cents;

Tennessee Counties

Bedford, Cannon, Cheatham, Clay, Coffee, Davidson, DeKalb, Dickson, Fentress, Franklin, Giles, Grundy, Hickman, Houston, Humphreys, Jackson, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Montgomery, Moore, Overton, Perry, Pickett, Putnam, Robertson, Rutherford, Smith, Stewart, Sumner, Trousdale, Van Buren, Warren, Wayne, White, Williamson, and Wilson.

Kentucky Counties

Allen, Barren, Metcalfe, Monroe, Simpson, and Warren.

(4) For a plant located outside the marketing area and north of a line extending through the northern boundaries of Georgia, Alabama and Mississippi, and at a location not included in paragraphs (a) (2) and (3) of this section, the adjustment shall be minus 20 cents. Such minus adjustment shall be increased 1.5 cents for each 10 miles or fraction thereof (by the shortest hard-surfaced highway distance as determined by the market administrator) that such plant is from the nearer of the city halls in Florence or Huntsville, Alabama;

(5) For a plant located outside the marketing area and south of a line extending through the northern boundaries of Georgia, Alabama and Mississippi, and not in the State of Florida or the Georgia counties listed in paragraph (a)(2) of this section, the adjustment shall be the adjustment applicable at Mobile, York, Tuscaloosa, Florence, Huntsville, Gadsden, Opelika or Dothan, Alabama, whichever city is nearest;

(6) For a plant located outside the marketing area in the State of Florida, the adjustment shall be plus 55 cents.

(b) For fluid milk products transferred in bulk from a pool plant to a pool distributing plant at which a higher Class I price applies and which are classified as Class I milk, the Class I price shall be the Class I price applicable at the location of the transferee-plant subject to a location adjustment credit for the transferor-plant which shall be determined by the market administrator for skim milk and butterfat, respectively, as follows:

(1) Subtract from the pounds of skim milk remaining in Class I at the transferee-plant after the computations pursuant to § 1093.44(a)(12) an amount equal to:

(i) The pounds of skim milk in receipts of milk at the transferee-plant from producers and handlers described in § 1093.9(c); and

(ii) The pounds of skim milk in receipts of packaged fluid milk products from other pool plants.

(2) Assign any remaining pounds of skim milk in Class I at the transferee-plant to the skim milk in receipts of fluid milk products from other pool plants, first to the transferor-plants at which the highest Class I price applies and then to other plants in sequence beginning with the plant at which the next highest Class I price applies;

(3) Compute the total amount of location adjustment credits to be assigned to transferor-plants by multiplying the hundredweight of skim milk assigned pursuant to paragraph (b)(2) of this section to each transferor-plant at which the Class I price is lower than the Class I price at the transferee-plant by the difference in Class I prices applicable at the transferor-plant and transferee-plant, and add the resulting amounts;

(4) Assign the total amount of location adjustment credits computed pursuant to paragraph (b)(3) of this section to those transferor-plants that transferred fluid milk products containing skim milk classified as Class I milk pursuant to § 1093.42(a) and at which the applicable Class I price is less than the Class I price at the transferee-plant, in sequence beginning with the plant at which the highest Class I price applies. Subject to the availability of such credits, the credit assigned to each plant shall be equal to the hundredweight of such Class I skim milk multiplied by the applicable adjustment rate determined pursuant to paragraph (b)(3) of this section for such plant. If the aggregate of this computation for all plants having the same adjustment rate as determined pursuant to paragraph (b)(3) of this section exceeds the credits that are available to those plants, such credits shall be prorated to the volume of skim milk in Class I transfers from such plants; and

(5) Location adjustment credit for butterfat shall be determined in accordance with the procedure outlined for skim milk in paragraph (b)(1) through (4) of this section.

(c) The market administrator shall determine and publicly announce the zone location of each plant of each handler. The market administrator shall notify the handler on or before the first day of any month in which a change in a plant location zone will apply.

(d) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1093.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1093.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price of pricing constituent that is required.

Uniform Price

§ 1093.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of such handler's pool plants and of each handler described in § 1093.9(b) and (c) with respect to milk that was not received at a pool plant as follows:

(a) Multiply the pounds of producer milk and milk received from a handler described in § 1093.9(c) that were classified in each class pursuant to §§ 1093.43(a) and 1093.44(c) by the applicable class prices, and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1093.44(a)(14) and the corrresponding step of § 1093.44(b) by the respective class prices, as adjusterd by the butterfat differential specified in § 1093.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1093.44(a)(9) and the corresponding step of § 1093.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1093.44(a)(7)(i) through (iv) and the corresponding step of § 1093.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1093.44(a)(7)(v) and (vi) and the corresponding step of § 1093.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1093.44(a)(11) and the corresponding step of § 1093.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1093.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) The market administrator shall compute the weighted average price for each month and the uniform price for each month of August through February per hundredweight for milk of 3.5 percent butterfat content as follows:

(1) Combine into one total the values computed pursuant to § 1093.60 for all handlers who filed the reports prescribed in § 1093.30 for the month and who made the payments pursuant to § 1093.71 for the preceding month;

(2) Add not less than one-half the unobligated balance in the producer-settlement fund;

(3) Add or subtract an amount equal to the total net value of the location adjustments computed pursuant to § 1093.75;

(4) Divide the resulting amount by the sum of the following for all handlers included in these computations;

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1093.60(f); and

(5) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The resulting figure, rounded to the nearest cent, shall be the weighted average price for each month and the

uniform price for the months of August through February.

(b) For each month of March through July, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk, each of 3.5 percent butterfat content, as follows:

(1) Compute the total value of excess milk for all handlers included in the computations pursuant to paragraph (a)(1) of this section as follows:

(i) Multiply the hundredweight quantity of excess milk that does not exceed the total quantity of such handlers' producer milk assigned to Class III milk by the Class III price;

(ii) Multiply the remaining hundredweight quantity of excess milk that does not exceed the total quantity of such handlers' producer milk assigned to Class II milk by the Class II price;

(iii) Multiply the remaining hundredweight quantity of excess milk by the Class I price; and

(iv) Add together the resulting amounts;

(2) Divide the total value of excess milk obtained in paragraph (b)(1) of this section by the total hundredweight of such milk and adjust to the nearest cent. The resulting figure shall be the uniform price for excess milk;

(3) From the amount resulting from the computations pursuant to paragraph (a)(1) through (3) of this section subtract an amount computed by multiplying the hundredweight of milk specified in paragraph (a)(4)(ii) of this section by the weighted average price;

(4) Subtract the total value of excess milk determined by multiplying the uniform price obtained in paragraph (b)(2) of this section times the hundredweight of excess milk from the amount computed pursuant to paragraph (b)(3) of this section;

(5) Divide the amount calculated pursuant to paragraph (b)(4) of this section by the total hundredweight of base milk included in these computations; and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(5) of this section. The resulting figure, rounded to the nearest cent, shall be the uniform price for base milk.

§ 1093.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 11th day after the end of each month the applicable uniform price(s) pursuant to § 1093.61 for such month.

Payments for Milk

§ 1093.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1093.71, 1093.76, and 1093.77, and out of which he shall make all payments pursuant to §§ 1093.72 and 1093.77. Payments due any handler shall be offset by any payments due from such handler.

§ 1093.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1093.60.

(2) The sum of:

(i) The value at the uniform price(s), as adjusted pursuant to § 1093.75, of such handler's receipts of producer milk and milk received from handlers pursuant to § 1093.9(c); and

(ii) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1093.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1093.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1093.71(a)(2) exceeds the amount computed pursuant to § 1093.71(a)(1). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the funds are available.

§ 1093.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) On or before the last day of each month, for milk received during the first 15 days of the month from such producer who has not discontinued delivery of milk to such handler before the 25th day of the month at not less than the Class III price for the preceding month or 90 percent of the weighted average price for the preceding month, whichever is higher, less proper deductions authorized in writing by the producer. If the producer had discontinued shipping milk to such handler before the 25th day of any month, or if the producer had no established base upon which to receive payments during the base paying months of March through July, the applicable rate for making payments to such producer pursuant to this paragraph in either case shall be the Class III price for the preceding month; and

(2) On or before the 15th day of the following month, an amount equal to not less than the uniform price(s), as adjusted pursuant to §§ 1093.74 and 1093.75, multiplied by the hundredweight of milk or base milk and excess milk received from such producer during the month, subject to the following adjustments:

(i) Less payments made to such producer pursuant to paragraph (a)(1) of this section;

(ii) Less deductions for marketing services made pursuant to § 1093.86;

(iii) Plus or minus adjustments for errors made in previous payments made to such producers; and

(iv) Less proper deductions authorized in writing by such producer.

(b) On or before the day prior to the dates specified in paragraph (a) of this section, each handler shall make

payment to the cooperative association for milk from producers who market their milk through the cooperative association and who have authorized the cooperative to collect such payments on their behalf an amount equal to the sum of the individual payments otherwise payable for such producer milk pursuant to paragraph (a) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1093.72 by the 15th day of such month, such handler may reduce payments pursuant to paragraphs (a) and (b) of this section to producers on a pro rata basis but not by more than the amount of the underpayment. Such payments shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator.

(d) Each handler pursuant to § 1093.9(a) who receives milk from a cooperative association as a handler pursuant to § 1093.9(c), including the milk of producers who are not members of such association, and who the market administrator determines have authorized such cooperative association to collect payment for their milk, shall pay such cooperative for such milk as follows:

(1) On or before the day prior to the last day of the month for milk received during the first 15 days of the month, not less than the Class III price for the preceding month or 90 percent of the weighted average price for the preceding month, whichever is higher; and

(2) On or before the 14th day of the following month for milk received during the month, not less than the appropriate uniform price(s) as adjusted pursuant to §§ 1093.74 and 1093.75, and less any payments made pursuant to paragraph (c)(1) of this section.

(e) In making payments for producer milk pursuant to this section, each handler shall furnish each producer or cooperative association from whom he has received milk a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The month and identity of the producer;

(2) The daily and total pounds and the average butterfat content of producer milk;

(3) For the months of March through July the total pounds of base milk received from the producer;

(4) The minimum rate(s) at which payment to the producer is required pursuant to this order;

(5) The rate(s) used in making the payment if such rate(s) is other than the applicable minimum rate(s);

(6) The amount, or the rate per hundredweight, and nature of each deduction claimed by the handler; and

(7) The net amount of payment to such producer or cooperative association.

§ 1093.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price(s) shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1093.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price and the uniform price for base milk shall be adjusted according to the location of the plant at which the milk was physically received at the rates set forth in § 1093.52(a); and

(b) The weighted average price applicable to other source milk shall be adjusted at the rates set forth in § 1093.52(a) applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price shall not be less than the Class III price.

§ 1093.76 Payments by a handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to § 1093.30(b) and § 1093.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and weighted average shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1093.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1093.60 shall be priced at the uniform price (or at the weighted average price if such is

provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1093.60 for such handler shall include, in lieu of the value of other source milk specified in § 1093.60(f) less the value of such other source milk specified in § 1093.71(a)(2)(ii), a value of milk determined pursuant to § 1093.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1093.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with its reports filed pursuant to §§ 1093.30(b) and 1093.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1093.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1093.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1093.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1093.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts, or other verification discloses errors resulting in money due the market administrator from a handler, or due a handler from the market administrator, or due a producer or cooperative association from a handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which the error(s) occurred.

§ 1093.78 Charges on overdue accounts.

Any unpaid obligation due the market administrator from a handler pursuant to §§ 1093.71, 1093.76, 1093.77, 1093.78, 1093.85, and 1093.86, shall be increased 1.5 percent each month beginning with the day following the date such obligation was due under the order. Any remaining amount due shall be increased at the same rate on the corresponding day of each month thereafter until paid. The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation and shall include any unpaid charges previously made pursuant to this section. For the purpose of this section, any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

Administrative Assessment and Marketing Service Deduction

§ 1093.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 5 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to:

(a) Receipts of producer milk (including such handler's own production) other than such receipts by a handler described in §1093.9(c) that were delivered to pool plants of other handlers;

(b) Receipts from a handler described in § 1093.9)c);

(c) Other source milk allocated to Class I pursuant to § 1093.44(a)(7) and (11) and the corresponding steps of § 1093.44(b), except such other source milk that is excluded from the computations pursuant to § 1093.60(d) and (f); and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1093.76.(a)(2).

§ 1093.86 Deduction for marketing services.

(a) Except as provided in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of such handler's own production) pursuant to § 1093.73, shall deduct 7 cents per hundredweight or such lesser amount as the Secretary may prescribe and shall pay such deductions to the market administrator not later than the 15th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples and tests of producer milk and provide market information for producers who are not receiving such services from a cooperative association. Such services shall be performed in whole or in part by the market administrator or an agent engaged by and responsible to the market administrator;

(b) In the case of producers for whom a cooperative association that the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall (in lieu of the deduction specified in paragraph (a) of this section), make such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 15th day after the end of each month, pay such deductions to the cooperative association rendering such services accompanied by a statement showing the amount of any such deductions and the amount of milk for which such deduction was computed for each producer.

Base-Excess Plan

§ 1093.90 Base milk.

"Base milk" means the producer milk of a producer in each month of March through July that is not is in excess of the producer's base multiplied by the number of days in the month.

§ 1093.91 Excess milk.

"Excess milk" means the producer milk of a producer in each month of March through July in excess of the producer's base milk for the month, and shall include all the producer milk in such months of a producer who has no base.

§ 1093.92 Computation of base for each producer.

(a) Subject to § 1093.93, the base for each producer shall be an amount obtained by dividing the total pounds of producer milk delivered by such producer during the immediately preceding months of September through January by the number of days' production represented by such producer milk or by 120, whichever is more. If a producer operated more than one farm at the same time, a separate computation of base shall be made for each such farm.

(b) Any producer who, during the immediately preceding months of September through January, delivered milk to a nonpool plant that became a pool plant after the beginning of such base-forming period shall be assigned a base calculated as if the plant were a pool plant during such entire base-forming period. A base thus assigned shall not be transferable.

§ 1093.93 Base rules.

(a) Except as provided in § 1093.92(b) and in paragraph (b) of this section, a base may be transferred in its entirety or in amounts of not less than 300 pounds effective on the first day of the month following the date on which an application for such transfer is received by the market administrator. Base may be transferred only to a person who is or will be a producer by the end of the month that the transfer is to be effective. A base transfer to be effective on March 1 for the month of March must be received by the market administrator on or before March 15. Such application shall be on a form approved by the market administrator and signed by the baseholder or the legal representative of the baseholder's estate and the person to whom the base is to be transferred. If a base is held jointly, the application shall be signed by all joint holders or the legal representative of the estate of any deceased baseholder.

(b) A producer who transferred base on or after March 1 may not receive by transfer additional base that would be applicable during March through July of the same year. A producer who received base by transfer on or after March 1 may not transfer a portion of the base to be applicable during March through July of the same year, but may transfer the entire base.

(c) The base established by a partnership may be divided between the partners on any basis agreed to in writing by them if written notification of the agreed-upon division of base signed by each partner is received by the market administrator prior to the first day of the month in which such division is to be effective.

(d) Two or more producers in a partnership may combine their separately established bases by giving notice to the market administrator prior to the first day of the month in which such combination of bases is to be effective.

(e) The base assigned a person who was a producer during any of the immediately preceding months of September through January may be increased to such producer's average daily producer milk deliveries in the month immediately preceding the month during which a condition described in paragraph (e)(1), (2), (3) of this section occured, providing such producer submitted to the market administrator in writing on or before March 1 a statement that established to the satisfaction of the market administrator that in the immediately preceding September through January base-forming period the amount of milk produced on such producer's farm was substantially reduced because of conditions beyond the control of such person, which resulted from:

(1) The loss by fire or windstorm of a farm building used in the production of milk on the producer's farm;

(2) Brucellosis, bovine tuberculosis or other infectious diseases in the producer's milking herd as certified by a licensed veterinarian; or

(3) A quarantine by a Federal or State authority that prevents the dairy farmer from supplying milk from the farm of such producer to a plant.

§ 1093.94 Announcement of established bases.

On or before February 28 of each year, the market administrator shall calculate a base for each person who was a producer during any of the immediately preceding months of September through January and shall notify each producer and the handler receiving milk from such dairy farmer of the base established by the producer. If requested by a cooperative association, the market administrator shall notify the cooperative association of each producer-member's base.

Signed at Washington, D.C., on September 8, 1981.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/FSQS**		DOT/FAA	USDA/FSIS**
DOT/FHWA	USDA/FSIS**		DOT/FHWA	USDA/FSQS**
DOT/FRA	USDA/REA		DOT/FRA	USDA/REA
DOT/MA*	MSPB/OPM		DOT/MA*	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. Comments on this program are still invited.

Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

*Note: The Maritime Administration will begin Mon./Thurs. publication as of Oct. 1, 1981.
**Note: As of September 14, 1981, documents received from Food Safety and Inspection Service (formerly Food Safety and Quality Service) will no longer be assigned to the Tues./Fri. publication schedule.

REMINDERS

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

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